

**Applicant**

**SCHEDULE OF EXHIBITS**

Exhibit A	Articles of Incorporation/ Certificate of Authority
Exhibit B	Officers and Directors
Exhibit C	Financial Statements
Exhibit D	Resumes of Key Employees
Exhibit E	Proposed Access Services Tariff

**American Broadband, Inc.**

**EXHIBIT A**

South Carolina Certificate of Authority

Alabama Articles of Incorporation

Alabama Certificate of Good Standing

Nancy L. Worley  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, Nancy L. Worley, Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that**

as appears on file and of record in this office, the pages hereto attached, contain a true, accurate and literal copy of articles of incorporation of American Broadband, Inc. as received and filed in the office of the Secretary of State of Alabama on January 17, 2002, showing the date of incorporation as January 14, 2002, the date said instrument was filed in the office of the Judge of Probate of Mobile County.





**In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.**

11/10/04

Date

*Nancy L. Worley*  
Nancy L. Worley

Secretary of State

# 220606	
Posted by: 	Checked by: 

**ARTICLES OF INCORPORATION**  
**OF**  
**AMERICAN BROADBAND, INC.**

The undersigned, acting as incorporator of a corporation under the Alabama Business Corporation Act, adopts the following Articles of Incorporation for such corporation:

1. The name of the corporation is AMERICAN BROADBAND, INC.
2. The corporation shall be of perpetual duration.
3. The purposes for which the corporation is organized are:
  - (a) To perform any and all lawful acts that may be performed by a corporation under Alabama law.
4. The aggregate number of shares which the corporation shall have authority to issue is one thousand (1,000) shares of common stock of the par value of One and No/100 (\$1.00) Dollar each.
5.
  - (a) The address of the incorporator of the corporation is P O Box 91127, Mobile, Alabama 36691 and the name of the incorporator at such address is Andrew M. Newton.
  - (b) The address of the initial registered office of the corporation is 1102 Linlen Avenue, Mobile, Alabama 36609 and the name of the initial registered agent at such address is Andrew M. Newton.
6. The number of directors constituting the board of directors of the corporation shall be between one (1) and seven (7), which shall be determined by the shareholders. The name and address of the person who is to serve as director until the first annual meeting of shareholders or until his successors are elected and qualified is:
  - (a) Andrew M. Newton  
P O Box 91127  
Mobile, Alabama 36691
7. No sale of shares shall be made by any shareholder to any person who is not a shareholder of the corporation, except as follows:

Articles of Incorporation of American Broadband, Inc.

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OF STATE

(a) In the event any shareholder desires to sell his shares or any portion thereof, to any person who is not a shareholder of the corporation, he shall first submit to the shareholders of the corporation satisfactory evidence of an agreement to purchase such shares by such third person and the price to be paid therefore.


(b) In the event the remaining shareholders agree to purchase said shares at the same price which the shareholders can receive from the third party, then the shares shall be sold to the shareholders of the corporation in such proportionate amounts as their respective ownership of shares in the corporation.

(c) In the event that any of the shareholders do not desire to purchase said shares, then such shares shall be sold at the same price which the shareholder can receive from the third party to such of the shareholders who may desire to purchase the same, in the same proportion as above set forth.

(d) No shares shall be sold to any person other than the shareholders of the corporation until each of the shareholders shall have been afforded an opportunity to purchase such shares at the price as above set forth and shall have declined to do so.

(e) Notice in writing to the shareholders of the corporation of the desire of any shareholder to sell his shares shall be given by such shareholder, and at the time, satisfactory evidence set forth. Shareholders shall have thirty (30) days time after the receipt of such notice within which to elect in writing to purchase same shares or to decline to do so.

IN WITNESS WHEREOF, the undersigned incorporator has hereunto subscribed his signature to these Articles of Incorporation this 03 day of January, 2002.

  
\_\_\_\_\_  
ANDREW M. NEWTON, Incorporator

STATE OF ALABAMA     )  
COUNTY OF MOBILE    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Andrew M. Newton whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said Instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3<sup>rd</sup> day of January, 2002.

Carol Beech

NOTARY PUBLIC

My Commission Expires: 5/15/04

Notice is given as required by Alabama law that this instrument was prepared by:

KEITH B. FRANKLIN  
FRANKLIN & STEIN, P.C.  
Attorney at Law  
63 South Royal Street  
Suite 1109  
Mobile, Alabama 36602  
(334) 433-0051

State of Alabama - Mobile County  
I certify this instrument was filed on:

Mon, Jan-14-2002 @ 3:44:11PM

RECORDING FEE	36.00
S. R. FEE	2.00
TOTAL AMOUNT	\$38.00

2002004129  
Don Davis, Judge of Probate

# STATE OF ALABAMA

I, Jim Bennett, Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Section 10-2B-4.02, Code of Alabama 1975, and upon an examination of the corporation records on file in this office, the following corporate name is reserved as available:

**American Broadband, Inc.**

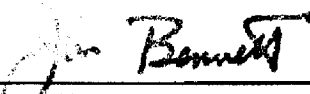
This domestic corporation name is proposed to be incorporated in Mobile County and is for the exclusive use of Keith Franklin, 63 South Royal Ste 1109, Mobile, AL 36602 for a period of one hundred twenty days beginning December 21, 2001 and expiring April 21, 2002.



In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.

December 21, 2001

Date

  
Jim Bennett

Secretary of State

Nancy L. Worley  
Secretary of State

P.O. Box 5616  
Montgomery, AL 36103-5616

# STATE OF ALABAMA

**I, Nancy L. Worley, Secretary of State of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that**

as appears on file and of record in this office, the pages hereto attached, contain a true, accurate and literal copy of amended and restated articles of incorporation of American Broadband, Inc. as received and filed in the office of the Secretary of State of Alabama on October 25, 2004, showing the date of restatement as October 21, 2004, the date said instrument was filed in the office of the Judge of Probate of Mobile County.



**In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.**

11/10/04

Date

*Nancy L. Worley*  
Nancy L. Worley

Secretary of State



# 220-606	
Posted by	Checked by
<i>[Signature]</i>	<i>[Signature]</i>

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
American Broadband, Inc.**

American Broadband, Inc., a corporation organized and existing under the laws of the State of Alabama (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is American Broadband, Inc.
2. The Corporation was incorporated in Mobile County, Alabama on January 14, 2002 pursuant to the Alabama Business Corporation Act (the "Act").
3. The Articles of Incorporation of the Corporation are hereby amended to effect the following amendments: (i) to increase the aggregate number of authorized shares to 15,000; (ii) to designate 10,000 of those shares as shares of common stock, par value \$1.00 per share, and 5,000 of those shares as shares of preferred stock; (iii) to designate 100 of the authorized preferred shares as shares of Series A Convertible Preferred Stock, par value \$5,000.00 per share, with the preferences, limitations and relative rights set forth in Exhibit A hereto; and (iv) to authorize the Board of Directors of the Corporation (the "Board of Directors" or "Board") to issue the remaining authorized shares of preferred stock in one or more classes or series from time to time with such designations, preferences, limitations, and relative rights as shall be stated and expressed in a resolution providing for the issuance of such shares adopted by the Board and in an amendment to the Articles of Incorporation as required by law.
4. The text of the Articles of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is American Broadband, Inc.

SECOND: The aggregate number of shares of stock that the Corporation is authorized to issue is Fifteen Thousand (15,000) shares; Ten Thousand (10,000) shares of which shall be designated common stock, par value \$1.00 per share ("Common Stock"), and Five Thousand (5,000) shares of which shall be designated preferred stock. Of the authorized shares of preferred stock, one hundred (100) of said shares shall be designated Series A Convertible Preferred Stock, par value \$5,000.00 per share, which shall have the preferences, limitations and relative rights set forth in Exhibit A hereto, the provisions of which are incorporated herein by reference and made a part of these Amended and Restated Articles of Incorporation (henceforth the "Articles") as fully as if set forth in the main text of this instrument.

The remaining authorized shares of preferred stock may be issued in one or more classes or series from time to time with such designations, preferences, limitations and relative rights as shall be stated and expressed in a resolution providing for the issuance of such shares adopted by the Board, pursuant to the authority hereby given.

Each class or series of preferred stock may be made subject to redemption or call at such time

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and at such price or prices as such resolution or resolutions providing for the issuance of such stock shall state and express. The holders of the preferred stock of any class or series shall be entitled to receive dividends at such rates, on such conditions, and at such times, and shall be entitled to such rights upon dissolution of, or upon any distribution of the assets of, the Corporation, and the preferred stock of any class or series may be convertible into or exchangeable for shares of any other class, classes, or series of capital stock of the Corporation, at such price or prices, or at such rates of exchange, and with such adjustments, as shall be stated and expressed in the resolution or resolutions of the Board providing for the issuance thereof.

Before issuing any shares of preferred stock of a class or series created under this Section, the Corporation must deliver to the Probate Judge for filing articles of amendment to the Articles of Incorporation providing for the issuance of said shares and setting forth the designations, preferences, limitations, and relative rights of such class or series of shares, as required by law.

When the Corporation receives the full consideration for which the Board of Directors authorized the issuance of any shares, the shares issued therefor shall be fully paid, and nonassessable.

THIRD: The street address of the initial registered office of the Corporation is 1102 Linlen Avenue, Mobile, Alabama 36609 and the name of its initial registered agent at such address is Andrew M. Newton.

FOURTH: The street address of the incorporator of the Corporation is 1102 Linlen Avenue, Mobile, Alabama 36609 and the name of the incorporator at such address is Andrew M. Newton.

FIFTH: The number of directors constituting the Board of Directors shall be between one (1) and seven (7), which shall be determined by the shareholders.

SIXTH: The purposes for which the Corporation is organized are the transaction of any and all lawful business for which corporations may be incorporated under the Act.

SEVENTH: The shareholders of the Corporation shall not have any preemptive right to acquire the Corporation's unissued shares of any class.

EIGHTH: No sale of shares shall be made by any shareholder to any person who is not a shareholder of the Corporation, except as follows:

(a) In the event any shareholder desires to sell his shares or any portion thereof, to any person who is not a shareholder of the Corporation, he shall first submit to the shareholders of the Corporation satisfactory evidence of an agreement to purchase such shares by such third person and the price to be paid therefore.

(b) In the event the remaining shareholders agree to purchase said shares at the same price which the shareholders can receive from the third party, then the shares shall be sold to the shareholders of the Corporation in such proportionate amounts as their respective ownership of

shares in the Corporation.

(c) In the event that any of the shareholders do not desire to purchase said shares, then such shares shall be sold at the same price which the shareholder can receive from the third party to such of the shareholders who may desire to purchase the same, in the same proportion as above set forth.

(d) No shares shall be sold to any person other than the shareholders of the Corporation until each of the shareholders shall have been afforded an opportunity to purchase such shares at the price as above set forth and shall have declined to do so.

(e) Notice in writing to the shareholders of the Corporation of the desire of any shareholder to sell his shares shall be given by such shareholder, and at the time, satisfactory evidence set forth. Shareholders shall have thirty (30) days time after the receipt of such notice within which to elect in writing to purchase same shares or to decline to do so.

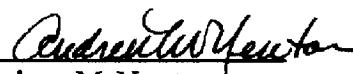
5. These Amended and Restated Articles of Incorporation of the Corporation were approved and adopted by the shareholders and the directors of the Corporation in the manner prescribed by law on August 2, 2004.

6. The number of shares of stock of the Corporation outstanding at the time of the adoption was 900.35; and the number of shares entitled to vote thereon was 900.35. All of the outstanding shares of the Corporation are shares of a single class of Common Stock.

7. The number of shares voted for the amendment and restatement was 900.35. No shares voted against the amendment and restatement.

IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation and does affirm the contents hereof as true under the penalties of perjury this 2<sup>nd</sup> day of August, 2004.

American Broadband, Inc.

By:   
Andrew M. Newton  
Chairman of the Board

This instrument was prepared by:

Name of individual: Thomas E. Twitty, Jr.  
Address of individual: Bowron, Latta & Wasden, P. C.  
Lawyers  
Post Office Box 16046  
Mobile, Alabama 36616

EXHIBIT A  
TO  
AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
American Broadband, Inc.

This Exhibit A to the Amended and Restated Articles of Incorporation of American Broadband, Inc. sets forth the preferences, limitations, and relative rights of the Company's Series A Convertible Preferred Stock, par value \$5,000.00 per share, which, by reference, are incorporated in and made a part of the Amended and Restated Articles of Incorporation executed concurrently herewith as fully as if set forth in the main text of the Articles, as provided therein. The Sections of this Exhibit are followed by the suffix A, beginning with Section 1A, so as to distinguish the Section numbers in this Exhibit from those in the main text of the Articles.

SECTION 1A. DESIGNATION, AMOUNT AND STATED VALUE.

The shares of such series of preferred stock shall be designated as Series A Convertible Preferred Stock (the "Series A Preferred"), and the number of shares constituting such series shall be one hundred (100) shares. The par value of the Series A Preferred shall be \$5,000.00 per share, the original per share issue price (the "Preferred Stated Value").

SECTION 2A. DIVIDENDS AND DISTRIBUTIONS.

Dividends on each share of Series A Preferred shall accumulate and accrue from the date on which such share is issued and from day to day thereafter, whether or not earned or declared, at the rate of 6% per annum on the Preferred Stated Value of \$5,000.00 per share until paid. Dividends accruing pursuant to this Section 2A shall be compounded semi-annually until paid. Such dividends shall be cumulative so that, if all accrued dividends shall not have been paid, or declared and set apart for payment, such accrued and unpaid dividends shall first be fully paid before any dividend or other distribution shall be paid or declared as provided in Section 4A below. Dividends on the shares of Series A Preferred shall be paid in cash.

SECTION 3A. VOTING RIGHTS.

(a) In addition to voting rights required by law or by the Corporation's Articles of Incorporation, as amended or restated from time to time (the "Articles"), subject to restrictions contained in the Articles, the holders of Series A Preferred shall be entitled to vote on all matters submitted to a vote of the Corporation's shareholders. Except as otherwise required by law or provided by the Articles, the holders of the Series A Preferred shall vote together with the holders of all other series of the Corporation's voting preferred stock, if any, and the holders of the Corporation's Common Stock, as one class on all matters submitted to a vote of the Corporation's shareholders, with the holders of Series A Preferred having a number of votes per share equal to the Conversion Rate thereof. "Conversion Rate" shall mean the number of shares of Common Stock into which one share of Series A Preferred is then convertible.

(b) For so long as any shares of the Series A Preferred remains outstanding, the affirmative vote of the holders of not less than a majority of the outstanding Series A Preferred shall be necessary to authorize:

(i) any amendment to the Articles that adversely affects the rights of the holders of the Series A Preferred;

(ii) the payment, setting aside or declaration of any dividend or other distribution on any shares of capital stock of the Corporation, except regular dividends on the Series A Preferred;

(iii) the application of any assets of the Corporation to the redemption, retirement, purchase or other acquisition, directly or indirectly, of any shares of capital stock of the Corporation; and

(iv) the incurrence by the Corporation, after the date hereof, of new indebtedness (other than indebtedness under those certain Securities Purchase Agreements dated as of August 1, 2003, and August 2, 2004, by and among the Corporation, the other parties executing signature pages thereto as purchasers (collectively, the "Purchasers"), and DH Capital LLC, as agent for the Purchasers) or the imposition of any liens securing any indebtedness or other obligation except (a) liens in favor of the Purchasers, (b) liens, claims or encumbrances imposed by law, such as carriers', warehousemen's, materialmen's and mechanics' liens, or liens arising out of judgments or awards against the Corporation with respect to which the Corporation at the time shall be prosecuting an appeal or proceedings for review or the time for doing so has not yet expired; (c) liens for taxes not yet subject to penalties for nonpayment and liens for taxes the payment of which is being contested or the time for doing so has not yet expired; and (d) encumbrances, easements or reservations of, or rights of others for, rights of way, highway and railroad crossings, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties, which do not in the aggregate materially impair the use of said properties in the operation of the Corporation's business.

#### SECTION 4A. CERTAIN RESTRICTIONS.

In addition to any other restrictions contained herein, until dividends, including all accrued dividends, on shares of the Series A Preferred outstanding shall have been paid in full or declared and set apart for payment, the Corporation shall not (A) pay dividends on or make any other distributions on any Common Stock or other stock ranking (either as to dividends or upon liquidation, dissolution or winding up) on a parity with or junior to the Series A Preferred, or (B) redeem or purchase or otherwise acquire for consideration any Common Stock or other stock ranking (either as to dividends or upon liquidation, dissolution or winding up) on a parity with or junior to the Series A Preferred. After such time as dividends, including all accrued dividends, on shares of the Series A Preferred outstanding have been paid in full or declared and set apart for payment, the Corporation may pay dividends on or make any other distributions on any Common Stock, so long as such dividends and distributions are shared on a pro rata as converted basis by the holders of the Series A Preferred.

## SECTION 5A. REACQUIRED SHARES.

Any shares of the Series A Preferred which have been converted to Common Stock or have been purchased or otherwise acquired by the Corporation in any manner whatsoever shall constitute treasury shares, unless cancelled by resolution or resolutions of the Board. All such treasury shares, subject to the provisions of Section 3A above, may be reissued as part of a new series of preferred stock to be created by resolution or resolutions of the Board of Directors, or otherwise in accordance with the Act.

## SECTION 6A. LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, each holder of the Series A Preferred shall be entitled to receive out of the assets of the Corporation, whether such assets are capital or surplus or of any other nature, after payment is made to the holders of all series of preferred stock ranking senior to the Series A Preferred but before any payment shall be made or any assets distributed to the holders of Common Stock or any series of preferred stock ranking junior to the Series A Preferred, an amount equal to the greater of (x) (i) the Preferred Stated Value of the shares of Series A Preferred held by such holder plus (ii) all accrued but unpaid dividends on such shares, whether or not declared, to the date of such liquidation, dissolution or winding up, and (y) the amount that would be distributed to such holder if the Series A Preferred held by such holder were converted to Common Stock in accordance with Section 7A hereof. Distributions shall be made ratably on the Series A Preferred and all other stock ranking on a parity with the Series A Preferred in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

(b) The (i) sale of all or substantially all of the assets of the Corporation, or (ii) the consolidation, reorganization, merger or other similar business combination of the Corporation with or into any other Person or Persons or (iii) the underwritten public offering of Common Stock of the Corporation generating not less than \$10,000,000.00 of gross proceeds payable to the Corporation (excluding the effect of any over-allotment option) (a "Qualified IPO"), shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Section 6A, upon the written consent of the holders of a majority of the issued and outstanding Series A Preferred. "Person" shall include any natural person, corporation, trust, association, corporation, partnership, limited liability company, joint venture and other entity and any government, governmental agency, instrumentality or political subdivision.

## SECTION 7A. CONVERSION.

(a) **Optional Conversion.** Subject to the provisions for adjustment hereinafter set forth in this Section 7A, each share of the Series A Preferred shall be convertible at any time at the option of the holder thereof, in the manner hereinafter set forth, into 1.131107843 fully paid and nonassessable shares of Common Stock of the Corporation, as adjusted pursuant to the terms hereof.

(b) **Mandatory Conversion.** Subject to the provisions for adjustment hereinafter set forth in this Section 7A, each share of the Series A Preferred shall be mandatorily converted into 1.131107843 fully paid and nonassessable shares of Common Stock of the Corporation, as adjusted pursuant to the terms hereof, in the event of, and concurrently with the consummation of, a Qualified

IPO.

(c) The Conversion Rate shall be adjusted from time to time as follows:

(i) In case the Corporation shall at any time or from time to time after the issuance of any shares of Series A Preferred declare or pay any dividend payable in its Common Stock or effect a subdivision of the outstanding shares of its Common Stock into a greater number of shares of Common Stock, by reclassification or otherwise, then, and in each such case, the Conversion Rate shall be adjusted so that the holder of each share of Series A Preferred shall be entitled to receive, upon the conversion thereof, the number of shares of Common Stock determined by multiplying (a) the number of shares of Common Stock into which such share of Series A Preferred was convertible immediately prior to the occurrence of such event, but before giving effect to such event, by (b) a fraction, the numerator of which is the number of shares of Common Stock which the holder would have been entitled to receive after giving effect to such event had such share been converted immediately prior to the occurrence of such event, and the denominator of which is the number of shares of Common Stock into which such share of Series A Preferred was convertible immediately prior to the occurrence of such event before giving effect to such event. An adjustment made pursuant to this subparagraph (c)(i) shall become effective (a) in the case of any such dividend, immediately after the close of business on the record date for the determination of holders of Common Stock entitled to receive such dividend, or (b) in the case of any such subdivision, at the close of business on the day immediately prior to the day upon which corporate action becomes effective.

(ii) In case the Corporation at any time or from time to time after the issuance of any shares of Series A Preferred shall combine or consolidate the outstanding shares of its Common Stock into a lesser number of shares of Common Stock, by reclassification or otherwise, then, and in each such case, the Conversion Rate shall be adjusted so that the holder of each share of Series A Preferred shall be entitled to receive, upon the conversion thereof, the number of shares of Common Stock determined by multiplying (a) the number of shares of Common Stock into which such share of Series A Preferred was convertible immediately prior to the occurrence of such event, but before giving effect to such event, by (b) a fraction, the numerator of which is the number of shares of Common Stock which the holder would have acquired after giving effect to such event had such share been converted immediately prior to the occurrence of such event, and the denominator of which is the number of shares of Common Stock into which such share was convertible immediately prior to the occurrence of such event before giving effect to such event. An adjustment made pursuant to this subparagraph (c)(ii) shall become effective at the close of business on the date immediately prior to the day upon which such corporate action becomes effective.

(iii) In case the Corporation at any time or from time to time after the issuance of any shares of Series A Preferred shall: (A) issue any options, warrants or other rights (excluding options to purchase Common Stock issued to employees, consultants, officers and directors of the Corporation pursuant to plans approved by the Board of Directors) entitling the holder thereof to subscribe for, or purchase, Common Stock at a price per share which, when added to the amount of consideration received or receivable by the Corporation for such options, warrants, or other rights, is less than the equivalent value of a share of Common Stock determined as provided below (the "Common Equivalent Value"); (B) issue or sell securities of the Corporation convertible into, or

exchangeable for, Common Stock at a price per share which, when added to the amount of consideration received or receivable, from the Corporation for such exchangeable or convertible securities, is less than the Common Equivalent Value of a share of Common Stock; or (C) issue or sell additional shares of Common Stock for consideration representing less than the Common Equivalent Value of a share of Common Stock; then the Conversion Rate shall be adjusted so that, thereafter, until further adjusted, the holder of each share of Series A Preferred shall be entitled to receive, upon the conversion thereof, the number of shares of Common Stock determined by multiplying (w) the number of shares of Common Stock into which such share is convertible immediately prior to the occurrence of such event, but without giving effect to such event, by (x) a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance or event plus the number of additional shares of Common Stock issuable upon exercise of such options, warrants, or rights, or exchangeable or convertible securities, or the additional number of shares of Common Stock issued at such time, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that either (y) the sum of the aggregate exercise price of the total number of shares of Common Stock issuable upon exercise of such options, warrants, or rights, or upon conversion or exchange of such convertible securities, and the aggregate amount of consideration, if any, received or receivable by the Corporation for such options, warrants, or rights, or convertible or exchangeable securities, or (z) the aggregate consideration received in connection with the sale of shares of its Common Stock for less than the then Common Equivalent Value of a share of Common Stock, as the case may be, would purchase at the Common Equivalent Value of a share of Common Stock.

The Common Equivalent Value of a share of Common Stock shall be the value of a share of Common Stock determined by dividing the Preferred Stated Value of a share of the Series A Preferred by 1.131107843, as adjusted pursuant to the terms hereof.

(iv) In the event that at any time or from time to time after the issuance of any shares of Series A Preferred, the Common Stock issuable upon conversion of the Series A Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend), or a reorganization, merger, consolidation or sale of assets, provided for elsewhere in this Section 7A, then, and in any such event, each holder of Series A Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, or other change, by the holders of the number of shares of Common Stock into which such shares of Series A Preferred could have been converted immediately prior to such recapitalization, reclassification, or change, all subject to further adjustment as provided herein.

(v) If at any time, or from time to time after the issuance of any shares of the Series A Preferred, there is a capital reorganization of the Common Stock other than a recapitalization, subdivision, combination, reclassification, or exchange of shares provided for elsewhere in this Section 7A or a merger or consolidation of the Corporation with or into another corporation, or the sale of all, or substantially all, of the Corporation's properties and assets to any other Person, then, as a part of such reorganization, merger, consolidation, or sale, provision shall be made so that the holders of the Series A Preferred shall thereafter be entitled to receive upon conversion of the Series



A Preferred the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, merger, consolidation, or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 7A with respect to the rights of the holders of Series A Preferred after the reorganization, merger, consolidation, or sale to the end that the provisions of this Section 7A shall be applicable after that event and be as nearly equivalent as may be practicable.

(vi) Upon the expiration of any rights, options, warrants or conversion or exchange privileges which caused an adjustment to be made pursuant to this Section 7A, if any thereof shall not have been exercised, the Conversion Rate shall, upon such expiration, be readjusted and shall thereafter be such as it would have been had it been originally adjusted (or had the original adjustment not been required, as the case may be) as if (a) the only shares of Common Stock so issued were the shares of Common Stock, if any, actually issued or sold upon the exercise of such rights, options, warrants or conversion or exchange privileges and (b) such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise plus the aggregate consideration, if any, actually received by the Corporation for the issuance, sale or grant of all such rights, options, warrants or conversion or exchange privileges, whether or not exercised.

(d) If any adjustment in the Conversion Rate required pursuant to this Section 7A would result in an increase or decrease of less than 1% in the number of shares of Common Stock into which each share of the Series A Preferred is then convertible, the amount of any such adjustment shall be carried forward and adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate at least 1% of the number of shares of Common Stock into which each share of the Series A Preferred is then convertible; provided that any such adjustments carried forward shall be made (i) immediately prior to the making of a liquidating distribution pursuant to Section 6A and (ii) immediately following receipt of notice from a holder of the intent to convert all or a portion of the Series A Preferred such that upon conversion the holder shall receive such number of shares of Common Stock as such holder is entitled, taking into account all adjustments required by this Section 7A.

(e) The holder of any shares of the Series A Preferred may convert such shares into shares of Common Stock pursuant to paragraph (a) of this Section 7A by surrendering for such purpose to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for that purpose, a certificate or certificates representing the shares of Series A Preferred to be converted (or if such certificate or certificates cannot be found, an affidavit of lost securities in form and substance acceptable to the Corporation, however no bond or guaranty shall be required other than an agreement of indemnity from the surrendering holder) accompanied by a written notice stating that such holder elects to convert all or a specified number of such shares in accordance with the provisions of this Section 7A and specifying the name or names of such holder's nominee, if other than such holder, in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. As promptly as practicable, and in any event within five business days after the surrender of such certificates and the receipt of such notice relating thereto, the Corporation shall deliver or cause to be delivered (i) certificates representing the number of validly issued, fully

paid and nonassessable shares of Common Stock of the Corporation to which the holder of the Series A Preferred so converted shall be entitled and (ii) if less than the full number of shares of the Series A Preferred evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares converted. Such conversion shall be deemed to have been made at the close of business on the date of giving of such notice and of such surrender of the certificate or certificates representing the shares of the Series A Preferred to be converted so that the rights of the holder thereof shall cease except for the right to receive Common Stock of the Corporation in accordance herewith and any accumulated, accrued or unpaid dividends pursuant to paragraph (g) below, and the converting holder shall be treated for all purposes as having become the record holder of such Common Stock of the Corporation at such time. The holder of any shares of Series A Preferred may also condition its election to convert such shares into shares of Common Stock pursuant to paragraph (a) of this Section 7A upon the occurrence of an event or series of events, by delivering a notice to the Corporation which clearly sets forth the specific event or events upon which such holder elects to convert. The conversion of such shares shall then be deemed to be effective either upon the occurrence or immediately prior to the occurrence of any event or events, as specified in such notice.

(f) The Series A Preferred shall convert to Common Stock of the Corporation pursuant to paragraph (b) of this Section 7A automatically upon notice in writing from the Corporation to the shareholders, including all holders of the Series A Preferred, setting forth the date of such conversion and the material terms of the triggering Qualified IPO, which shall have been consummated as of such date. As promptly as practicable after such notice, and in any event within three business days after the surrender of certificates for the Series A Preferred (if required by the Board of Directors), the Corporation shall deliver or cause to be delivered to each holder of Series A Preferred certificates representing the number of validly issued, fully paid and nonassessable shares of Common Stock of the Corporation to which such holder of the Series A Preferred so converted shall be entitled. Such conversion shall be deemed to have been made at the close of business on the date set forth in such notice of mandatory conversion so that the rights of the holder thereof shall cease with or without surrender of certificates for the Series A Preferred, except for the right to receive Common Stock of the Corporation in accordance herewith and any accumulated, accrued or unpaid dividends pursuant to paragraph (g) below, and the converting holder shall be treated for all purposes as having become the record holder of such Common Stock of the Corporation at such time.

(g) Upon conversion of any shares of the Series A Preferred pursuant to paragraph (a) or (b) of this Section 7A, the holder thereof shall be entitled to receive any accumulated, accrued or unpaid dividends in respect of the shares so converted (whether or not declared or otherwise payable as of such date of conversion), including any dividends on such shares of the Series A Preferred declared prior to such conversion if such holder held such shares on the record date fixed for the determination of holders of the Series A Preferred entitled to receive payment of such dividend.

(h) The Corporation shall at all times reserve and keep available out of its authorized Common Stock the full number of shares of Common Stock of the Corporation issuable upon the conversion of all outstanding shares of the Series A Preferred.

## SECTION 8A. REPORTS AS TO ADJUSTMENTS.

Whenever the number of shares of Common Stock into which the shares of the Series A Preferred are convertible is adjusted as provided in Section 7A, the Corporation will (A) promptly compute such adjustment and furnish to each transfer agent for or holder of record of the Series A Preferred a certificate, signed by a principal financial officer of the Corporation, setting forth the number of shares of Common Stock into which each share of the Series A Preferred is convertible as a result of such adjustment, a brief statement of the facts requiring such adjustment and the computation thereof and when such adjustment will become effective and (B) promptly mail to the holders of record of the outstanding shares of the Series A Preferred a notice stating that the number of shares into which the shares of Series A Preferred are convertible has been adjusted and setting forth the new number of shares into which each share of the Series A Preferred is convertible as a result of such adjustment and when such adjustment will become effective. Notwithstanding the foregoing, the Corporation shall incur no liability for its failure to take any action set forth in this Section 8A, nor shall such failure affect the validity, rights or preferences of any shares of the Series A Preferred.

## SECTION 9A. RANKING.

The Series A Preferred shall rank senior to the Common Stock and any other series of preferred stock of the Corporation hereafter created (except for any other series of preferred stock which the Board of Directors shall establish and designate to rank senior or equal therewith and which shall be approved by vote of the holders of the Series A Preferred acting pursuant to Section 3A hereof), as to the payment of dividends and the distribution of assets and rights upon liquidation, dissolution or winding up of the Corporation.

CERTIFIED TRUE COPY  
Probate Court of Mobile Co., AL  
Don Davis, Judge

Signature

  
Joe McFarchem, Jr. Chief Clerk

Date:

10/21/04

State of Alabama-Mobile County  
I certify this instrument was filed on:  
Thursday, October 21, 2004 @ 2:44:44 PM  
S.R. FEE \$2.00  
RECORDING FEES \$26.00  
TOTAL AMOUNT \$28.00  
2004078468  
Don Davis, Judge of Probate



***State of Alabama***  
***Department of Revenue***

**Certificate of Good Standing**

**American Broadband Inc** is in compliance with the requirements in Chapter 14, Title 40, Code of Alabama 1975, prior to its repeal (relating to Franchise Tax) and Chapter 14A, Title 40, Code of Alabama 1975 relating to (Business Privilege and Corporate Shares Tax), as applicable through the tax year 2004.

ORIGINAL

*IN WITNESS WHEREOF, I hereunto set my hand this  
date of November 18, 2004.*

*Richard H. Hemminger*

\_\_\_\_\_  
*Director, Individual and Corporate Tax Division*

ATTEST:

*[Signature]*

\_\_\_\_\_  
*Secretary*

***Business Privilege Tax***

***Phone: 334-353-7923***

# *The State of South Carolina*



## *Office of Secretary of State Mark Hammond* **Certificate of Authorization**

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

***AMERICAN BROADBAND, INC.,***

a corporation duly organized under the laws of the state of **ALABAMA** and issued a certificate of authority to transact business in South Carolina on **March 18th, 2004**, has on the date hereof filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the Corporation that its authority to transact business in South Carolina is subject to being revoked pursuant to Section 33-15-310 of the 1976 South Carolina Code, and no application for surrender of authority to do business in South Carolina has been filed in this office as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 15th day of November, 2004.

A handwritten signature of Mark Hammond in black ink, written over a horizontal line.

Mark Hammond, Secretary of State

**American Broadband, Inc.**

**EXHIBIT B**

Officers and Directors

**American Broadband, Inc.**  
Contact List

Andrew M. Newton, Chairman of the Board  
4574 Avril Ct.  
Mobile, AL 36608  
251-662-1510

Stephen John, CEO/President  
2 West Main St.  
Uniontown, PA 15401  
724-437-1042

Paul E. Bullington, CFO/VP Finance  
700 Cedar Lane  
Fairhope, AL 36532  
251-662-1512

Eric R. Daniels, COO/VP Operations  
1120 Sutton Ct  
Mobile, AL 36609  
251-583-0755

Glyn Newton, Board Member  
513 St. Charles Lane.  
Knoxville, TN 37922  
865-671-2399

Jack Leftwich, Board Member  
104 Mockingbird Lane  
Lebanon, TN 37087

**American Broadband, Inc.**

**EXHIBIT C**

Financial Statements



# American Broadband

## Income Statement

Quarter Ended September 30, 2004

<b>Revenue</b>	<b>881,673</b>
<b>Direct Expenses</b>	
Network Leases	171,987
Network Management	16,830
Telecommunications Equipment	362,669
<b>Total Direct Expenses</b>	<b>551,486</b>
<b>Gross Profit</b>	<b>330,186</b>
% of Revenue	37.4%
<b>Operating Expenses</b>	
General & Administrative	315,874
Sales & Marketing	20,026
<b>Total Operating Expenses</b>	<b>335,900</b>
<b>Operating Income</b>	<b>(5,714)</b>
% of Revenues	-0.6%
<b>Non-Operating Expenses</b>	
Interest Expense	43,106
Interest (Income)	0
<b>Total Non-Op Expenses</b>	<b>43,106</b>
<b>Depreciation</b>	<b>21,271</b>
<b>Net Income (Loss)</b>	<b>(70,090)</b>
% of Revenue	-7.9%

*Note: This statement has not yet been reviewed by American Broadband's accountants. It is therefore subject to adjustment upon the accountants' review.*

# American Broadband

## Balance Sheet

September 30, 2004

Assets	
<b>Current Assets</b>	
Cash	\$ 689,515
Accounts Receivable	13,125
Notes Receivable	44,000
Other Current Assets	18,394
<b>Total Current Assets</b>	<b>765,033</b>
<b>Property and Equipment, Net of Depreciation</b>	
Fiber Optic Network and Related Equipment	843,634
Furniture and Equipment	22,814
Inventory	13,905
<b>Total Property and Equipment, Net of Depreciation</b>	<b>880,352</b>
<b>Other Assets</b>	<b>286,774</b>
<b>Total Assets</b>	<b>\$ 1,932,159</b>
<b>Liabilities &amp; Stockholders' Equity</b>	
<b>Current Liabilities</b>	
Notes Payable	\$ -
Accounts Payable	32,671
Accrued Expenses and Other Liabilities	25,899
<b>Total Current Liabilities</b>	<b>58,569</b>
<b>Long Term Liabilities</b>	
Capital Lease Obligation	5,697
Long Term Debt	1,467,023
<b>Total Long Term Liabilities</b>	<b>1,472,720</b>
<b>Total Liabilities</b>	<b>1,531,289</b>
<b>Stockholders' Equity (Deficit)</b>	
Paid In Capital	650,000
Retained Earnings	(83,357)
Net Income	(165,773)
<b>Total Stockholders' Equity</b>	<b>400,870</b>
<b>Total Liabilities &amp; Stockholders' Equity</b>	<b>1,932,159</b>

*Note: This statement has not yet been reviewed by American Broadband's accountants. It is therefore subject to adjustment upon the accountants' review.*

**American Broadband, Inc.**

**Financial Statements**

**For the period January 14, 2002 (Date of Inception)  
through December 31, 2002**

***(With Accountants' Compilation Report)***

## American Broadband, Inc.

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# GOODLOE & McDERMOTT, P.C.

CERTIFIED PUBLIC ACCOUNTANTS

Travis B. Goodloe, Jr., CPA  
Edward G. McDermott, CPA

tgoodloe@goodloemcdermott.com  
emcdermott@goodloemcdermott.com

To the Stockholders  
American Broadband, Inc.

## Accountants' Compilation Report

We have compiled the accompanying balance sheet of American Broadband, Inc. as of December 31, 2002, and the related statements of income, stockholders' equity and cash flows for the period January 14, 2002 (Date of Inception) through December 31, 2002, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of the members. We have not audited or reviewed the accompanying financial statements and accompanying information and, accordingly do not express an opinion or any other form of assurance on them.

*Goodloe & McDermott, P.C.*

July 24, 2003

**American Broadband, Inc.**

Balance Sheet  
December 31, 2002  
*(With Accountants' Compilation Report)*

**Assets****Current Assets**

Cash and cash equivalents

\$ 915

**Total current assets**915**Total assets**\$ 915**Liabilities and Stockholders' Equity****Total liabilities**\$ -**Stockholders' equity**Common stock, \$1 par value, 1,000 shares  
authorized and issued

1,000

Stock subscriptions receivable

(1,000)

Retained earnings

915915**Total liabilities and stockholders' equity**\$ 915

**American Broadband, Inc.**

**Statement of Income**  
**For the period January 14, 2002 (Date of Inception)**  
**through December 31, 2002**  
*(With Accountants' Compilation Report)*

<b>Revenues</b>	
Sales	<u>\$ 120,278</u>
<b>Operating expenses</b>	
Automobile expense	540
Bank service charges	36
Dues & subscriptions	75
Gifts	2,000
Meals and entertainment	1,736
Office supplies	931
Outside services	1,000
Payroll expenses	70,981
Postage and delivery	31
Professsional fees	207
Sales & marketing	436
Taxes	166
Telephone	978
Travel	5,246
<b>Total operating expenses</b>	<u>84,363</u>
<b>Net income</b>	<u><u>\$ 35,915</u></u>

**American Broadband, Inc.**

**Statement of Changes in Stockholders' Equity**  
**For the period January 14, 2002 (Date of Inception)**  
**Through December 31, 2002**  
*(With Accountants' Compilation Report)*

	<u>Common Stock</u>		<u>Retained Earnings</u>	<u>Total Stockholders' Equity</u>
	<u>Number of of Shares</u>	<u>Amount</u>		
Capitalization of stock	1,000	\$ 1,000	\$ -	\$ 1,000
Issuance of stock subscriptions		(1,000)	-	(1,000)
Net income		-	35,915	35,915
Distributions		-	(35,000)	(35,000)
	<u>1,000</u>	<u>\$ -</u>	<u>\$ 915</u>	<u>\$ 915</u>



**American Broadband, Inc.**

Statement of Cash Flows  
December 31, 2002  
(With Accountants' Compilation Report)

**Operating activities**

Net income

\$ 35,915

Net cash provided by operating activities

35,915**Investing activities**

Distributions

(35,000)

Net cash used in investing activities

(35,000)

Net (decrease) in cash

915

**Cash and cash equivalents**

Beginning of period

-

End of period

\$ 915**Supplemental schedule of noncash financing activities:**

Common stock issued for stock subscription receivable

\$ 1,000

**American Broadband, Inc.**

**Notes to Financial Statements**

**December 31, 2002**

*(With Accountants' Compilation Report)*

**Note 1 – History and organization**

The Company was incorporated January 14, 2002 under the laws of the State of Alabama and is engaged in the provision telecommunication services. The Company also acts as an agent for selected telecommunications entities. The Company's customers are primarily located throughout the eastern United States.

**Note 2 – Summary of significant accounting policies**

**Cash and cash equivalents**

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

**Income taxes**

The Company has elected with the consent of its stockholders, to be taxed as an "S" corporation under the Internal Revenue Code. In lieu of corporate income taxes, the shareholders of an "S" corporation are taxed on their proportionate share of the Company's taxable income. Accordingly, no provision or liability for federal or state income taxes has been included in the financial statements.

The Company may, from time to time, make distributions to its shareholders in order to meet their individual tax liabilities. This includes distributions made to satisfy quarterly estimated tax payments related to Company earnings.

**Advertising**

The Company expenses advertising costs as incurred. Advertising expenses amounted to \$436 for the period January 14, 2002 through December 31, 2002.

**Use of estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from these estimates.

**American Broadband, Inc.**

Notes to Financial Statements

December 31, 2002

*(With Accountants' Compilation Report)*

**Note 3 – Concentration of credit risks**

The Company, in the normal course of business, extends credit to its customers based on various terms. The Company does not require collateral on these receivables.

For the period January 14, 2002 through December 31, 2002, the Company derived one hundred percent of its revenue from one customer.

**Note 4 - Going concern**

The Company incurred a net loss of \$49,804 during the three months ended March 31, 2003, and as of that date the Company's current liabilities exceeded its current assets by \$48,889 as reported in the Company's financial statements issued July 24, 2003. Company management is developing a plan to finance short term operations through a combination of the issuance of debt and stock. The ability of the Company to continue as a going concern is dependent on the success of management's plan. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

**Note 5 – Subsequent events**

The Company has entered into several agency agreements and leases with telecommunication providers as well as service contracts with customers subsequent to December 31, 2002. As of July 24, 2003 the Company has not made payment for the recurring charges under these contracts as the specified services have not yet been made available; similarly the Company has not billed for recurring services to its customers. The Company anticipates that these contracts will be operational beginning September 1, 2003.

Additionally, the Company has entered into an agreement dated June 3, 2003 which stipulates that one-half of the fees associated with the capital charges to initiate fiber optic network service will be payable upon execution of the agreement, with the other half due when service is actually begun. As of July 24, 2003 no payment has been made under this agreement as the Company has not been invoiced.

**American Broadband, Inc.**

**Financial Statements**

**Year Ended December 31, 2003**

***(With Accountants' Compilation Report)***

# American Broadband, Inc.

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# GOODLOE & McDERMOTT, P.C.

CERTIFIED PUBLIC ACCOUNTANTS

Travis B. Goodloe, Jr., CPA  
Edward G. McDermott, CPA

travis@gm-cpas.com  
gray@gm-cpas.com

To the Stockholders  
American Broadband, Inc.

## **Accountants' Compilation Report**

We have compiled the accompanying balance sheet of American Broadband, Inc. as of December 31, 2003, and the related statements of income and retained earnings (deficit) and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly do not express an opinion or any other form of assurance on them.

*Goodloe & McDermott, P.C.*

June 7, 2004

**American Broadband, Inc.**

**Statement of Income and Retained Earnings (Deficit)**

**For the Year Ended December 31, 2003**

*(With Accountants' Compilation Report)*

**Revenues**

Sales	\$ 237,839
-------	------------

**Operating expenses**

Automobile expense	6,906
Bank service charges	696
Computer expenses	120
Consulting	14,808
Depreciation and amortization	19,340
Dues and subscriptions	245
Insurance	13,970
Installation fees	1,000
Interest	3,288
Meals and entertainment	5,029
Network leases	15,875
Office rent	4,230
Office supplies	3,765
Payroll expenses	170,528
Postage and delivery	784
Professional fees	988
Repairs and maintenance	543
Sales and marketing	27,366
Taxes and licenses	444
Telephone	10,632
Travel	26,477
Utilities	806

Total operating expenses	327,840
--------------------------	---------

Income (loss) before taxes	(90,001)
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Income taxes (benefit)	(5,729)
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Net income (loss)	(84,272)
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**Retained earnings (deficit)**

Beginning of period	915
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End of period	\$ (83,357)
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See notes to financial statements

**American Broadband, Inc.**

Statement of Cash Flows  
For the Year Ended December 31, 2003  
(With Accountants' Compilation Report)

Net income (loss)	\$ (84,272)
Adjustments to reconcile net income (loss) to net cash used by operating activities	
Depreciation	11,404
Amortization	7,936
Decrease (increase) in:	
Trade and other receivables	(34,613)
Deposits	(10,000)
Deferred tax assets	(5,729)
(Decrease)increase in:	
Accounts payable	2,475
Accrued liabilities	2,255
Total adjustments	<u>(26,272)</u>
<b>Net cash used by operating activities</b>	<u>(110,544)</u>
<b>Investing activities</b>	
Purchase of depreciable assets	(354,287)
Purchase of intangible assets	(187,056)
Stockholder advances	(27,500)
<b>Net cash used by investing activities</b>	<u>(568,843)</u>
<b>Financing activities</b>	
Proceeds from long-term debt	1,120,000
Payments on long-term debt	(14,104)
Payments for financing fees	(119,047)
Payments on capital lease obligation	(1,201)
Capital contribution	150,000
<b>Net cash provided by financing activities</b>	<u>1,135,648</u>
 Net increase in cash	 456,261
<b>Cash and cash equivalents</b>	
Beginning of period	<u>915</u>
 End of period	 <u>\$ 457,176</u>



**American Broadband, Inc.**

Statement of Cash Flows (continued)  
For the Year Ended December 31, 2003  
(*With Accountants' Compilation Report*)

**Supplemental disclosures of cash flow information:**

Interest payments during the year ended December 31, 2003 totaled \$17,392. Interest capitalized during the year was \$14,104 and the amount charged to expense was \$3,288.

Also during the year, the Company acquired office furniture with a value of \$8,500 by entering into a capital lease.

**American Broadband, Inc.****Notes to Financial Statements**

December 31, 2003

*(With Accountants' Compilation Report)***Note 1 – History and organization**

The Company was incorporated January 14, 2002 under the laws of the State of Alabama and is a private network service provider engaged in the provision of private line data services. The Company also acts as an agent for selected communications service providers. The Company's customers are primarily located throughout the eastern United States.

**Note 2 – Summary of significant accounting policies****Cash and cash equivalents**

For purposes of the statement of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

**Accounts receivable**

The Company provides an allowance for doubtful accounts based upon a review of outstanding receivables, historical collection information, and existing economic conditions. No provision for doubtful accounts has been made for the year ended December 31, 2003 as management considers all receivables collectible.

**Property and equipment**

The property and equipment items are stated at cost. Expenditures which materially increase values or extend useful lives are capitalized, while replacements, maintenance and repairs which do not improve or extend the lives of the respective assets are charged against income as incurred. The net gain or loss on items retired or otherwise disposed of is credited or charged to operations and the costs of accumulated depreciation are removed from the accounts.

**Depreciation**

Depreciation of property and equipment is made on a basis considered adequate to amortize the related costs over their estimated useful lives, using straight-line and accelerated methods. Estimated useful lives are principally as follows: telecommunications equipment, 7 years; furniture and fixtures, 7 years; computer equipment, 5 years.

**American Broadband, Inc.**

Notes to Financial Statements (continued)  
December 31, 2003  
(With Accountants' Compilation Report)

**Note 2 – Summary of significant accounting policies**

**Income taxes**

Effective August 4, 2003, the Company terminated its status as a Subchapter S small business corporation. As a taxpaying entity, the Company accounts for income taxes accounts in accordance with Statement of Financial Accounting Standards ("SFAS") No. 109, "Accounting for Income Taxes," which requires the recognition of deferred income taxes for the differences between the basis of assets and liabilities for financial statement and income tax purposes.

**Advertising**

The Company expenses advertising costs as incurred. There were no advertising expenses for the year ended December 31, 2003.

**Use of estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from these estimates.

**Note 3 – Receivables**

Receivables at December 31, 2003 consist of the following:

Trade receivables	\$ 33,113
Related party	27,500
Miscellaneous	<u>1,500</u>
	<u>\$ 62,113</u>

**American Broadband, Inc.**

Balance Sheet  
December 31, 2003  
*(With Accountants' Compilation Report)*

**Assets**

<b>Current assets</b>	
Cash and cash equivalents	\$ 457,176
Receivables	62,113
	<u>519,289</u>
 <b>Property and equipment, net</b>	 <u>351,383</u>
 <b>Other assets</b>	
Deferred tax asset	5,729
Deposits	10,000
Intangible assets, net	298,167
	<u>313,896</u>
 <b>Total assets</b>	 <u><u>\$ 1,184,568</u></u>

**Liabilities and Stockholders' Equity**

<b>Current liabilities</b>	
Current maturities of long-term debt	\$ 162,112
Accounts payable	2,475
Accrued expenses	2,255
	<u>166,842</u>
 <b>Long-term liabilities</b>	
Capital lease obligation	7,299
Long-term debt	943,784
	<u>951,083</u>
 <b>Stockholders' equity (deficit)</b>	
Common stock, \$1 par value, 1,000 shares authorized and issued, 882 shares outstanding	1,000
Additional paid-in capital	150,000
Stock subscriptions receivable	(882)
Treasury stock, 118 shares	(118)
Retained earnings (deficit)	(83,357)
	<u>66,643</u>
 <b>Total liabilities and stockholders' equity (deficit)</b>	 <u><u>\$ 1,184,568</u></u>

See notes to financial statements

**American Broadband, Inc.**

Notes to Financial Statements (continued)

December 31, 2003

*(With Accountants' Compilation Report)*

**Note 4 – Property and equipment**

Property and equipment at December 31, 2003 consists of the following:

Telecommunications equipment	\$ 350,474
Furniture and fixtures	8,500
Computer equipment	3,813
	<u>362,787</u>
Less accumulated depreciation	<u>11,404</u>
	<u><u>\$ 351,383</u></u>

**Note 5 – Income taxes**

Deferred taxes at December 31, 2003 consist of the following:

Noncurrent deferred tax asset	\$ 11,777
Noncurrent deferred tax liability	<u>(6,048)</u>
	5,729
Less valuation allowance	<u>-</u>
	<u><u>\$ 5,729</u></u>

Income tax expense (benefit) for the year ended December 31, 2003 consists of the following:

Current	\$ -
Deferred	6,048
Tax benefit of net operating loss carryforward	<u>(11,777)</u>
	<u><u>\$ (5,729)</u></u>

Deferred taxes are recognized for temporary differences between the basis of assets and liabilities for financial statement and income tax purposes. The differences relate primarily to depreciable assets (using accelerated depreciation methods for income tax purposes) and to net operating loss carry forwards.

**American Broadband, Inc.**

Notes to Financial Statements (continued)

December 31, 2003

*(With Accountants' Compilation Report)*

**Note 5 – Income taxes (continued)**

The Company's provision for income taxes differs from applying the statutory U.S. federal tax rate to income taxes before taxes. The primary differences result from providing for state income taxes and from deducting certain expenses for financial statement purposes but not for federal income tax purposes.

The Company has a net operating loss carryforward of \$58,886 that expires in 2024.

**Note 6 – Intangible assets**

Intangible assets consist of the following at December 31, 2003:

Financing costs	\$ 119,047
Build out costs	187,056
	<hr/> 306,103
Less accumulated depreciation	7,936
	<hr/> <u>\$ 298,167</u>

Financing costs represent the costs of issuing debt and is being amortized on a straight-line basis over 60 months. Amortization for these costs was \$7,936 in 2003.

Build out costs represent installation charges and fiber purchases in connection with a fiber optic cable operating lease with duration of 60 months. The Company will not retain title to any property under this arrangement and did not recognize any amortization of these costs in 2003.

**Note 7 – Capital lease obligation**

The Company leases certain office furniture and equipment under a capital lease. The economic substance of the lease is that the Company is financing the acquisition of the property through the lease, and accordingly, the equipment is recorded as assets and the lease is recorded as a liability.

**American Broadband, Inc.**

Notes to Financial Statements (continued)

December 31, 2003

*(With Accountants' Compilation Report)*

**Note 7 – Capital lease obligation (continued)**

The following is an analysis of the leased assets included in property and equipment:

Furniture and fixtures	\$ 4,558
Office equipment	3,942
	<u>8,500</u>
Less accumulated depreciation	440
	<u><u>\$ 8,060</u></u>

Future minimum lease payments under capital leases as of December 31, 2003 for each remaining years and in the aggregate are as follows:

2004	\$ 4,047
2005	4,047
2006	1,686
	<u>9,780</u>
Less amount representing interest	2,481
	<u><u>\$ 7,299</u></u>

**Note 8 – Long-term debt and warrants**

The Company entered a securities purchase agreement on August 1, 2003. Under the terms of the agreement, the Company will issue to a number of purchasers notes with a face value in the aggregate amount of a minimum of \$1,700,000 and a maximum of \$3,000,000. Additionally, under this agreement the Company has made available the aggregate amount of 117.65 warrants which entitles the purchasers to purchase Company stock for \$1.00. The purchase price for the warrants is \$0.01 each. The warrants do not expire.

**American Broadband, Inc.**

Notes to Financial Statements (continued)

December 31, 2003

*(With Accountants' Compilation Report)*

**Note 8 – Long-term debt and warrants (continued)**

The amounts outstanding under this arrangement at December 31, 2003 are as follows:

Note payables due in quarterly installments of \$30,904 including interest at 16.0%, maturing November 4, 2008, secured by a lien on Company assets	\$ 1,105,896
Less current maturities	<u>162,112</u>
Long-term debt, net	<u><u>\$ 943,784</u></u>

Maturities of long-term debt at December 31, 2003 are as follows:

Year ending December 31	
2004 (included in current liabilities)	\$ 162,112
2005	189,648
2006	221,861
2007	259,546
2008	<u>272,729</u>
	<u><u>\$ 1,105,896</u></u>

**Note 9 – Concentration of credit risks**

The Company maintains its cash balances at one financial institution and the balances are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$100,000. At December 31, 2003, the Company's uninsured balances totaled \$357,156.

The Company, in the normal course of business, extends credit to its customers based on various terms. The Company does not require collateral on these receivables.

**Note 10 – Going concern**

As shown in the accompanying financial statements, the Company incurred a net loss of \$84,272 during the year ended December 31, 2003. Company management is developing a plan to address short term operational losses. The ability of the Company to continue as a going concern is dependent on the success of management's plan. The financial



**American Broadband, Inc.**

Notes to Financial Statements (continued)

December 31, 2003

*(With Accountants' Compilation Report)*

**Note 10 – Going concern (continued)**

statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

**Note 11 – Related party transactions**

The Company advanced \$27,500 to a shareholder during 2003. The advance bears interest at the applicable federal rate as published by the Internal Revenue Service.

**Note 12 – Commitments**

The Company entered into a leasing arrangement for office facilities and indefeasible right of use (IRU) agreements for certain fiber optic fiber and equipment during 2003. The office lease expires April 30, 2005. Minimum future payments under these arrangements are as follows:

	IRU Agreements	Operating Lease
2004	\$ 722,660	\$ 5,834
2005	817,860	2,455
2006	817,860	-
2007	817,860	-
2008	812,985	-
Thereafter	147,400	-
	<u>\$ 4,136,625</u>	<u>\$ 8,289</u>

Rent expense recognized under the office operating lease was \$4,230 for the year ended December 31, 2003.

**Note 13 – Treasury stock**

The Company acquired 117.65 shares of outstanding common stock during 2003 under an anti-dilution agreement between the existing stockholders. The shares are reported at cost.

**American Broadband, Inc.**

Notes to Financial Statements (continued)  
December 31, 2003  
*(With Accountants' Compilation Report)*

**Note 14 – Shareholder agreement**

During 2003 the stockholders adopted an agreement imposing certain restrictions on the disposition of stock and requiring a two-thirds majority approval for certain actions taken by the Company. This agreement does not apply to subsequent stockholders.

In the event a stockholder wishes to dispose of stock, the agreement grants a first right of refusal first to the Company to redeem shares and a second right of refusal to those stockholders party to the agreement. The agreement establishes a procedure to determine the purchase price.

**American Broadband, Inc.**

**EXHIBIT D**

Resumes of Key Employees

**American Broadband, Inc.**  
**Statement of Managerial and Technical Ability**

**Managerial Capability**

American Broadband, Inc. possesses the managerial experience to operate successfully as a reseller of telecommunications services in the State of South Carolina. American Broadband was granted authority as an Alternative Access Vendor in the State of Florida in January of 2004. American Broadband's management team is highly experienced in managing the delivery of telecommunications services to clients, having delivered and managed telecommunications services to some of the most demanding customers in the country, including the U. S. Department of Defense, Verizon Wireless, and CNN (please see management backgrounds below). American Broadband's managerial team currently manages the fiber optic networks of AT&T Wireless across a number of states, having overseen the design, installation, provisioning and maintenance of this network. This same management team also manages a facilities-based telecommunications provider, Southern Light, which operates in the states of Alabama, Florida, Mississippi and Louisiana.

*Management Backgrounds:*

**Andrew Newton, Chief Executive Officer**

Mr. Newton is a founding member of American Broadband and is a key component in the financial aspects of our business. In addition to his role in American Broadband, Mr. Newton also serves as President of Southern Light, LLC, a facilities-based provider of telecommunications services based in Alabama. Mr. Newton is a seasoned veteran of the telecommunications industry, having founded and run two companies in the industry. Under his direction these companies have combined annual revenues of over \$4 million and are undergoing revenue growth rates in excess of 200% per year. Additionally, Mr. Newton has extensive outside plant fiber optic construction experience having started and served as president of two construction companies. Mr. Newton has been the primary member responsible for raising all rounds of funding for the company, which is now in excess of \$15 million. A graduate of Birmingham Southern College, Mr. Newton was featured in the December 2000 issue of Alabama Business Magazine as one of five top Alabama Entrepreneurs under the age of 35, Mobile Press Register's articles on July 13, 2000 highlighting Mr. Newton's career, and June 24, 2001 article entitled "Southern Light Runs Rings Around Mobile," and 'Southern Magazine's Fall 2001 issue "A Million Points of Southern Light." In addition to the companies listed above, Mr. Newton serves on the board of other companies and organizations such as: Compass Bank, America's Junior Miss, Mobile's Bayfest, American Pitch Pine Co., YMCA (Chairman) and Dauphin Way UMC Board of Trustees.

### **Stephen John, President**

Stephen John brings more than 25 years experience to American Broadband from both the telecommunications and cable industry. Prior to founding American Broadband, Stephen was Eastern Division Vice-President and Director of Charter Business Networks - the broadband business networking division of Charter Communications (Nasdaq: CHTR) - where he built the division to \$30 million in revenues in only three years. While in this position, he developed and implemented a business plan to enter the commercial broadband service market introducing a suite of Optical Ethernet and Advanced IP services including VOIP, IP Video and VPN. He had full responsibility for the P&L including a \$30 million capital budget and direct oversight of Engineering, Finance, Marketing, Sales, Product Development and Operation. To date Charter Business Networks is one of the most successful business units ever launched at Charter delivering triple digit annual growth rates and 70% cash flow margins. Prior to Charter's acquisition of Helicon Cable Communications, Stephen had initiated a similar commercial business line for Helicon where he negotiated interconnection agreements and deployed several Advanced Infrastructure Networks within eight of their cable markets. Prior to Helicon, Stephen managed branch offices for ATI Communications and United States Cellular. He holds a BS in Economics degree from West Virginia University, an Associate degree in Electronic Engineering Technology and has also graduated from the John M. Olin School of Business Leadership Enhancement Program at Washington University in St. Louis.

### **Eric Daniels, Chief Operating Officer**

Mr. Daniels is a founding member of American Broadband and has served as the Chief Operating Officer (COO) of American Broadband since its inception in 2002. Mr. Daniels is an expert in fiber optic outside plant construction and maintenance and optical network design and management. In addition to his role as COO of American Broadband, Mr. Daniels has also served in the same capacity for Southern Light, LLC, a facilities-based provider of telecommunications services in Alabama. Over his career Mr. Daniels has overseen the construction of a 300 mile fiber optic network, has designed and managed high capacity networks for such customers as the U. S. Department of Defense, the U. S. Navy, Nextel Partners, Verizon Wireless, Clear Channel Communications, CNN, the University of South Alabama and the City of Pensacola. Prior to joining our team, Mr. Daniels served as an active duty officer with the United States Navy. He served as Flag Lieutenant/Aide de Campe to Admirals Jose Betancourt and Dennis Conley, and as Combat Information Center Officer on the USS LABOON and the USS ANTRIM. Mr. Daniels currently maintains the rank of Lieutenant Commander with the Naval Reserves and recently served in Operation Iraqi Freedom. He is a 1993 graduate of the United States Naval Academy.

**Paul Bullington, Chief Financial Officer**

Mr. Bullington currently serves as the CFO for American Broadband, where he has full responsibility for managing all aspects of the company's financial activities, including raising investment capital, financial planning and reporting, management of company accounting functions, tax planning and oversight, capital structure strategy and planning, and managing banking relationships. Despite the telecom industry's difficulties during Paul's tenure, he has helped to shepherd the company through this period and recently helped the company close on its third major round of funding. Mr. Bullington also has extensive operational experience in the telecommunications industry, having served as VP of Corporate Strategy and Finance for Southern Light, LLC, a facilities-based telecommunications provider in Alabama since March of 2001. Before joining the team, Paul was a Senior Manager in Accenture's (formerly Andersen Consulting) Strategic Services Practice. At Accenture Paul worked with a number of clients, ranging from start-up ventures to Fortune 100 companies, on their most critical strategic issues, such as corporate strategic plans, new business unit launches, pricing and marketing strategies, and acquisition evaluations. In this position, Paul honed a number of critical business skills, including managing teams, financial modeling, competitive analysis, structured problem solving, and business model development. Paul has also worked as an analyst for Eli Lilly & Co. in their Global Marketing Division in South Carolinapolis, South Carolina, and as a sales manager at Royal Cup Coffee in Birmingham, Alabama. Paul holds an M.B.A. in finance and strategy from the University of Chicago, Graduate School of Business. He also holds a B.S. in both Economics and International Studies from Birmingham-Southern College in Birmingham, Alabama. Mr. Bullington is also a member of the Board of Directors for the Home of Grace for Women in Mobile, Alabama.

**Herbert J. Myers, Jr., Vice President, Network Engineering**

Prior to joining American Broadband, Mr. Myers served as Director of Network Engineering for Charter Communications, a leading national Broadband Service Provider. He directed a team of engineers and technicians responsible for building out and subsequently managing a Regional Optical Transport and Broadband Service Delivery Network. Before working at Charter, Herb served as Chief Network Strategist for Helicon Online a regional ISP based in Western Pennsylvania. Herb oversaw all aspects network design, implementation and management for a multi state IP network. Herb has developed expertise in all 7 Layers of the OSI Networking Model. Herb has received extensive vendor training and certification from Networking Industry leaders such as Cisco, Nortel Networks, Scientific Atlanta and others. Herb received a degree in Electrical Engineering Technology, from The Pennsylvania State University in 1996.

## **Technical Capability**

American Broadband, Inc. possesses the technical capability to operate a telecommunications reseller in the State of South Carolina. American Broadband's management team has the deep technical experience in designing, selling, delivering and billing for telecommunications services ranging from T-1 to OC-192 and Gigabit Ethernet. The American Broadband team's vast experience in designing and delivering telecommunications services and in working with ILECs and IXC's to exchange and resell capacity, will provide American Broadband with the technical capabilities to offer these services on a resale basis in South Carolina. This management team currently operates over 500 miles of lit fiber optic networks, with circuits ranging from DS-1 to OC-48, in the states of Florida and Alabama. Additionally, the technical employees of American Broadband possess considerable experience in the technical aspects of the telecommunications industry and maintain some of the highest technical certification levels in the industry.

In addition, American Broadband maintains a 24 hour customer service hotline at our Network Operations Center. We have a 24-hour toll free emergency response center that is available to receive reports on all types of network problems and dispatch the proper response team. Our response teams are equipped to handle all types of network issues including, but not limited to fiber cuts, downed poles, power outages, splice failures, and equipment failures. At Southern Light, we maintain a 2-hour response time on all customer circuits. We make every effort to insure that all possible weaknesses have redundant backups. We have dual fiber entrances, dual generators, battery backup systems, 4 HVAC systems, bullet and water-resistant walls and doors, FM 200 fire suppression at this facility to ensure that it stays up all hours of the day, every day for our customers.

As a result of these capabilities American Broadband will begin its tenure as a reseller of telecommunications services in South Carolina with a considerable track record and a great deal of expertise in managing telecommunications networks and delivering telecommunications solutions to customers.

**American Broadband, Inc.**

**EXHIBIT E**

Proposed Access Services Tariff



**TITLE SHEET**

**SOUTH CAROLINA TELECOMMUNICATIONS TARIFF**

**OF**

**American Broadband, Inc.**

Mailing Address:

P.O. Box 91127

Mobile, AL 36691

Physical Address:

618 Azalea Road

Mobile, AL 36609

Phone: (877) 276-7731

This tariff contains the descriptions, regulations, and rates applicable to the furnishings of service and facilities for telecommunications services provided by, (hereafter referred to as "the Company") with its principal office at 618 Azalea Road, Mobile, Alabama 36609. This tariff applies for services furnished within the State of South Carolina. This tariff is on file with the South Carolina Public Service Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business. This tariff is governed and interpreted according to the laws of the state of South Carolina.

**ISSUED:**

**EFFECTIVE:**

Issued by: Paul E. Bullington, Vice President and Chief Financial Officer  
618 Azalea Road  
Mobile, Alabama 36609

**CHECK SHEET**

The Title Page and Pages 1 to 35 inclusive are effective as of the date shown. Original and revised pages as names below comprise all changes from the original tariff that are in effect in the hereof:

<u>PAGE</u>	<u>REVISION</u>
1	..... original
2	..... original
3	..... original
4	..... original
5	..... original
6	..... original
7	..... original
8	..... original
9	..... original
10	..... original
11	..... original
12	..... original
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30	..... original
31	..... original
32	..... original
33	..... original
34	..... original
35	..... original

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618 Azalea Road  
Mobile, Alabama 36609

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Mobile, Alabama 36609

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Mobile, Alabama 36609

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Mobile, Alabama 36609

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Mobile, Alabama 36609

**CONCURRING CARRIERS**

**NONE**

**CONNECTING CARRIERS**

**NONE**

**OTHER PARTICIPATING CARRIERS**

**NONE**

**ISSUED:**

**EFFECTIVE:**

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Mobile, Alabama 36609

**TARIFF FORMAT**

Sheet Numbering – Sheet numbers appear in the upper right hand corner of the sheet. Sheets are numbered sequentially and from time to time new sheets may be added to the tariff. When a new sheet is added between existing sheets, a decimal is added to the preceding sheet number. For example, a new page added between Sheets 3 and 4 would be numbered 3.1

Explanation of Symbols – When changes are made in any tariff sheet, a revised sheet will be issued canceling the tariff sheet affected. Changes will be identified on the revised sheet(s) through the use of the following symbols:

- ( C ) -- To signify a change in regulations.
- ( D ) -- To signify discontinued rate or regulation.
- ( I ) -- To signify a rate increase.
- ( N ) -- To signify a new rate or regulation.
- ( R ) -- To signify a rate reduction.
- ( M ) -- To signify moved text.
- ( T ) -- To signify a change in text, but no change in rate or regulation.
- ( S ) -- To signify matter appearing elsewhere or repeated for clarification
- ( V ) -- To signify vintage tariff
- ( Z ) -- To signify correction

In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right hand margin of the page, which clearly shows the exact number of lines being changed.

Check Sheets – When a tariff filing is made within the Public Service Commission, an updated check sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross-reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). The tariff user should refer to the latest check sheet to find out if a particular page is the most current page on file with the Public Service Commission.

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618 Azalea Road  
Mobile, Alabama 36609



**DEFINITIONS OF TERMS AND ABBREVIATIONS**

**Commission** – The South Carolina Public Service Commission.

**Company or Carrier** – The term hereafter given to American Broadband, Inc.

**Customer or End User** – The person, firm, corporation or other entity which initiates a call or establishes Private Line Service on the Company's network, or accepts billing for a call on the company's network, subject to the terms and conditions of the Company's tariff regulations.

**Customer Provided Equipment** – Equipment or facilities provided by persons other than the Company and connected to the Company's services and/or facilities. The Customer, not the Company, shall be responsible for compliance with FCC rules, 47 CFR. Part 68, and for all maintenance of such equipment and/or facilities.

**ICB** – Individual Case Basis

**ILEC** – Incumbent Local Exchange Company

**Other Common Carrier** – A person, firm, corporation, or entity regulated by the LPSC or the FCC which subscribes to carriers' communications services and facilities and resells these communications services and facilities to the public for a profit.

**Rate Center** – A geographic point from which the vertical and horizontal coordinate is used in calculation of airline mileage for the purpose of rating a call.

**Subscriber** – The person, firm, partnership, corporation, or other entity who owns, leases or manages the pay telephone, PBX, or other switch vehicle from which a Customer or End User places a call utilizing the services of the Company. The Subscriber has a pre-existing business arrangement with the Company and may also be a Customer or an End User.

ISSUED:

EFFECTIVE:

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618 Azalea Road  
Mobile, Alabama 36609

## **2.0 RULES AND REGULATIONS**

### **2.1 Service Area**

Service is being offered for origination and termination throughout the entire State of South Carolina.

### **2.2 Calculation of Distance**

(A) Usage charges for all mileage sensitive products are based on the airline distance between rate centers associated with the originating and terminating points of the call.

(B) Long distance telecommunications service rates between points (cities, towns or localities) are based on the airline distances between rate centers. In general, each point is designated as a rate center; certain small towns or localities are assigned adjacent rate centers with which they are closely associated for communication purposes or by community of interest.

(C) The distance between the Rate Center of the Subscriber's equipment and that of the destination point is calculated by using the "V" and "H" coordinates found in AT&T FCC Tariff No. 10, in the following manner:

Step 1 – Obtain the "V" and "H" coordinates for the Rate Centers of the Subscriber's switch and the destination point.

Step 2 – Obtain the difference between the "V" coordinates of each of the Rate Centers. Obtain the difference between the "H" coordinates.

Step 3 – Square the differences obtained in Step 2.

Step 4 – Add the squares of the "V" difference and "H" difference obtained in Step 3.

Step 5 – Divide the sum of the square obtained in Step 4 by ten (10). Round to the next higher whole number if any fraction results from the division.

Step 6 – Obtain the square root of the whole number obtained in Step 5. Round to the next higher whole number if any fraction is obtained. This is the distance between Rate Centers.

ISSUED:

EFFECTIVE:

Issued by: Paul E. Bullington, Vice President and Chief Financial Officer  
618 Azalea Road  
Mobile, Alabama 36609

**2.3 Undertaking of American Broadband**  
**2.3.1 General**

American Broadband's services and facilities are furnished for communications originating at specified points within the State of South Carolina under terms of this tariff.

The Company installs, operates, and maintains the communications services provided herein under in accordance with the terms and conditions set forth under this tariff. Services provided herein under will be provided over facilities leased by the Company from other carriers or entities and/or owned and operated by the Company for the completion of service within the State of South Carolina. The Company may act as the Subscriber's agent for ordering access connection facilities provided by other carriers or entities, when authorized by the Subscriber, to allow connection of a Subscriber's location to the network. The Subscriber shall be responsible for all charges due for such service arrangement.

The Company's services and facilities are provided on a monthly basis unless otherwise stated, and are available twenty-four hours per day, seven days per week.

**2.3.2 Limitations**

- A. Service is offered subject to the availability of the necessary facilities and equipment, or both facilities and equipment, and subject to the provisions of this tariff. American Broadband reserves the right to negotiate special terms and conditions (i.e., special promotions) with particular customers providing agreement is reached and signed with the customer.
- B. The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control, or when the Subscriber or Customer is using service in violation of provisions of this tariff, or in violation of the law.
- C. The Company does not undertake to transmit messages, but offers the use of facilities when available, and will not be liable for errors in transmission or for failure to establish connections.

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- D. All Facilities provided under this tariff are directly controlled by the Company and the Subscriber may not transfer or assign the use of service or facilities without the express written consent of the Company. Such transfer or assignment shall only apply where there is no interruption of the use or location of the service or facilities.
- E. Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service.

## **2.4 Liability of the Company**

### **2.4.1 General**

- A. In no event shall the Company be liable for any special, consequential, punitive or incidental damages including loss of use, profits, revenue or goodwill. The Company shall not be liable for any failure of performance due to causes and/or circumstances beyond its control, nor shall The Company be liable for any act or omission for any other company furnishing any portion of service to subscriber, any equipment supplied to the Subscriber by The Company or any other supplier of equipment to subscriber (under warranty, service agreement, or otherwise), or any network service contracted by subscriber or The Company.
- B. The liability of The Company or any claim or loss, expense or damage (including indirect, special or consequential damage), for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this tariff shall not exceed an amount equivalent to the proportionate monthly charge to the customer for the period of service or the facility provided during which such interruption, delay, error, omission or defect occurs. For the purpose of computing this amount, the number of days in each monthly billing cycle will be an assumed month of thirty (30) days for prorations.
- C. The Company shall be liable for any claim or loss, expense, or damage (including indirect, special or consequential damage) for any interruption, delay, error or other defect in any service, facility or transmission provided under this tariff, if caused by any person or entity other than The Company by any malfunction of any service or facility provided by any other carrier, by an act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond the Company's direct control.

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- D. The Company shall not be liable for, and shall be fully indemnified and held harmless by the Customer against any claim, or loss, expense or damage, including indirect, special or consequential damage, (1) for defamation, invasion of privacy, infringement of copyright or patent, unauthorized use of any trademark, trade name, or service mark, unfair competition, interference with or misappropriation or violation of any contract, proprietary or creative right, or any other injury to any person, property or entity arising from the material, data information, or content revealed to, transmitted, processed, handled, or used by the Company under this tariff; or (2) for connecting, combining or adapting the Company's facilities with customer's apparatus or systems; or (3) for any act or omission of the customer; or (4) for any personal injury or death of any person or for any loss of or damage to customer's premises or any other property, whether owned by the customer or others, caused directly or indirectly by the installation, maintenance, location, condition, operation, failure or removal of equipment or wiring provided by the Company if not directly caused by negligence of the Company. No agent or employee or any other carrier shall be deemed to be an agent or employee of the Company.
- E. The Company shall not be liable for any charges or costs incurred by the customer for use of another carrier's services whether caused by failure of the Company's equipment or service or otherwise.
- F. The Company shall be indemnified, defended and held harmless by the Customer, against any claim, loss or damage arising from the use of services offered under this tariff including, but not limited to, claims by subscribers to services provided to the Customer, and users of any services provided or resold by the Customer.

#### **2.4.2 Unauthorized Computer Intrusion**

The Company's liability, if any, for its willful misconduct is not limited by this section of the tariff. With respect to any other claim or suit by a subscriber, common carrier, reseller, or any other party for damages caused by, or associated with, any unauthorized computer intrusion, including but not limited to the input of damaging information such as a virus, time bomb, any unauthorized access, interference, alteration, destruction, theft of, or tampering with, a Company computer, switch, data, database, software, information, network or other similar system, the Company's liability, if any shall not exceed an amount equal to the proportionate charge by the Company for the service for the period during which the service provided by the Company was affected or so utilized.

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**2.4.3 Transmission of Data**

The Company shall not be held liable for any damage, harm or loss of data caused by the subscriber using the Company's voice grade telephone access lines and/or facilities for the transmission of data. The Company's liability shall be limited to errors or damages to the transmission of voice messages over these facilities, and the liability shall be limited to an amount equal to the proportional amount of the Company's billing for the period of service during which the errors or damages occur.

**2.4.4 Errors or Damages Caused by System Data Limitations**

The Company's liability for errors or damage resulting from the inability of the Company's systems to process unusual dates, such as the Year 2000, shall be limited to an amount equal to the proportional amount of the Company's billing for the period of service during which the errors or damages occur.

**2.5 Use of Service**

**2.5.1 Purpose**

Service provided under this tariff may be used for any lawful purpose for which the service is technically suited.

The Company reserves the right to discontinue service, limit service, or to impose requirements on Subscribers as required to meet changing regulatory rules and standards of the South Carolina Public Service Commission.

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## 2.6 Terminal Equipment

The Company's facilities and service may be used with or terminated in Subscriber-provided terminal equipment or Subscriber-provided communications systems, such as a PBX. Such terminal equipment shall be furnished and maintained at the expense of the Subscriber, except as otherwise provided. The Subscriber is responsible for all costs at his or her premises, including personnel, wiring, electrical power, and the like, incurred in the use of the Company's service. Additional protective equipment, if needed, shall be employed at the Customer's expense.

- A. When such terminal equipment is used, the equipment shall comply with the minimum protective criteria set forth in Subpart B of the Federal Communications Commission's Rules (47 C.F.R. 68.100 – 68.110) and shall not interfere with service furnished to other customers.
- B. The Customer shall ensure that his terminal equipment is properly interfaced with the Company's facilities, that the signals emitted into the Company's facilities are of the proper mode, bandwidth, power, data speed, and signal level for the intended use of the customer, and that the signals do not damage the Company's equipment, injure personnel or degrade service to other Customers.
- C. If the Customer fails to maintain and operate his terminal equipment properly, resulting in the occurrence or possibility of harm to the Company's equipment, personnel, or the quality of service to other Customers, may, upon written notice, require the use of protective equipment at the customer's expense. If this fails to produce satisfactory quality and safety of service, the Company may, upon written notice, terminate the customer's service immediately.
- D. The Customer shall not remove, dismantle, modify, repair, or otherwise tamper with any Company-owned terminal equipment. Customer shall be liable for any loss or damage to the Company's Equipment or any third party, or from any cause whatsoever, other than the actions of normal wear and tear resulting the proper use of the Company's Equipment excepted. The Customer shall, at reasonable times, provide the Company access to its premises for the purpose of installing, maintaining, inspecting and removing the Company's equipment.

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**2.7 Installation and Termination**

**2.7.1 Subscriber Service Contract**

Subscribers are required to contract for the various services offered by the Company. Contracts may be granted up to a term of ninety-six (96) months. All services offered are subject to the Public Service Commission of the State of South Carolina Rules and Regulations as they apply.

**2.8 Payment for Service and Service Dispute Resolution**

**2.8.1 Payment for Service**

All charges due by the Customer are payable to any agency duly authorized to receive such payments. The billing agency may be a local exchange telephone company, or other billing service. Terms of payment shall be according to the rules and regulation of the agency and subject to the rules of regulatory agencies, such as the South Carolina PSC. Any objections to billed charges must be promptly reported to the Company's billing agent. Adjustments to Customer's Bills shall be made to the extent that circumstances exist which reasonably indicate that such changes are appropriate.

Billing is payable upon receipt. All bills will show a delinquent date of not less than thirty (30) days from the bill date. However, the Company may demand immediate payment under the following circumstances:

- A. Where service is terminated or abandoned.
- B. Where service is two (2) times greater than the Customer's average usage as reflected on the bills for the Customer's average usage for the three (3) billing cycles prior to the current bill or, in the case of a new Customer who has been receiving service for less than four (4) billing cycles, where the service is twice the estimated billing cycle.
- C. Where the Company has reason to believe that a business subscriber is about to go out of business or that bankruptcy is imminent for that customer.
- D. When a bill for the immediately preceding billing cycle is issued and the Subscriber is delinquent in his payment for the billing cycle(s) preceding the immediately preceding billing cycle.

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The demand for immediate payment will be accompanied by a bill which itemizes or summarizes the charges for which payment is demanded, or, if the demand is made orally, an itemized or summarized bill will be mailed or delivered to the customer within three (3) days after the demand is made.

The Customer is responsible for payment of all charges for services furnished to the Customer. Charges for all installation, removal, equipment security deposits, moves and rearrangements are payable upon demand by the Company. Recurring charges and non-recurring charges, if any, are billed in advance and shall not be prorated for any period shorter than the minimum service period. The initial billing will include the charges, if any, for the first billing cycle's minimum charges. The initial billing may, at the Company's option, also include one billing cycle's estimated usage billed in advance. Thereafter, charges based on actual usage during a billing cycle will be billed each billing cycle in arrears. This information will be disclosed in a written contract or service agreement.

If a Customer has no usage for two consecutive billing cycles, the Company may; 1) discontinue sending the Customer a bill until such Customer uses the Company's system, and/or 2) cancel the Customer's authorization code, if any. If the Company cancels the Customer's authorization code, it will be reinstated at the Customer's request if the Customer complies with all of the Company's rules and regulations.

All applicable taxes, charges, exactions, fees or the like which must be paid to any governmental authority for the provision, use, consumption, or enjoyment of service and which may be charged directly to the consumer will be separately stated on the Customer's bill and collected from the Customer.

The Customer is responsible for payment of all charges for services furnished to the Customer or its joint or authorized users. This responsibility is not charged, by the virtue of any use, misuse, or abuse of the customer's service, or customer-provided systems, equipment, facilities, or services interconnected to the customer's service, which use, misuse, or abuse may be occasioned by third parties, including, without limitation, the customer's employees or other members or the public.

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**2.8.2 Service Dispute Resolution**

Any objection to billed charges should be reported to the billing agent or Company within sixty (60) days from the day the bill is issued. Adjustments to End User's bills shall be made when circumstances exist which reasonably indicate that such changes are appropriate. End Users have the right to appeal service disputes to the South Carolina Public Service Commission.

**2.9 Establishment and Re-establishment of Credit**

**2.9.1** In the event service is temporarily suspended for non-payment such service will be restored upon payment of all charges due.

**2.9.2** A restoral of service charge will be applicable per Customer temporarily suspended.

**2.9.3** Subscribers not reestablished within five (5) days from date of suspension will be treated as a new subscriber and appropriate Non Recurring Charges and an advance payment will apply.

**2.9.4** The use and restoration of facilities or service in emergencies shall be in accordance with Part 64, Subpart "D", of the Federal Communications Rules and Regulations which specifies the priority system for such activities.

**2.10 Deposits and Advance Payments**

**2.10.1** The Company does not require a deposit from the Customer or Subscriber.

**2.10.2** For Customers of Subscribers whom the Company feels an advance payment is necessary, the Company reserves the right to collect an amount not to exceed one (1) month's estimated charges as an advance payment for service. This will be applied against the next month's charges and if necessary a new advance payment will be collected for the next month.

**2.11 Notices**

**2.11.1 Notice to the Customer**

Notices from the Company to a Customer normally will be given in writing, either delivered or mailed to the Customer's address of record.

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In emergencies, where delay may result in impaired service or in hazards to the Customer, the public, or the Company's Facilities, the Company may resort to verbal notices given by telephone, radiotelephone, personal contact, or other means of communication.

### **2.11.2 Notices from the Customer**

Notices from a Customer to the Company may be given verbally by the Customer or the Customer's authorized agent at the Company's office, or by written communication mailed thereto. Written notice is required when specified in tariff schedules in any written agreement.

## **2.12 Rendering and Payment of Bills**

### **2.12.1 Returned Check Charge**

When a payment for service is made by check, draft, or similar negotiable instrument, a returned check charge will be made by the Company for each such item returned unpaid by a bank to the company for any reason, in accordance with South Carolina Law. The acceptance of checks, drafts, or other negotiable instruments for the satisfaction of the Customer's debts to the Company shall not constitute a waiver by the Company of its right to payment by legal tender.

### **2.12.2 Extra Copies of Bill**

Extra Copies of a subscriber's monthly bill will be provided by the Company at cost.

### **2.12.3 Late Charges Penalty Fee**

All bills for miscellaneous services are due when rendered and payable at the office of the Company or authorized collection agency within thirty (30) days of the billing date. All bills not paid within thirty (30) days of the billing date will be assessed a penalty of 1.5 percent on intrastate billing. Failure to receive the telephone bill does not relieve the subscriber from prompt payment within thirty (30) days of date billing date. The Company will assess a penalty on disputed bills that are delinquent until the dispute is settled and/or paid in full.

## **2.13 Fraud**

The Company shall have the right to refuse or discontinue service if the acts of the Customer, including furnishing false credit information or the conditions upon their premises are such as to indicate intention to defraud the Company.

## **2.14 Non-Compliance with the Company's Rules**

The Company may discontinue service if a customer fails to comply with any of the rules herein.

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**2.15 Telephone Calls with Intent to Annoy**

The Company may discontinue service of any Customer who, with intent to annoy, telephones another addresses to or about such other person any obscene language or addresses to such other person any threat to inflict injury to the person or property of the person addressed or of any family member.

The Company may discontinue service of any Customer who, with intent to annoy, repeatedly telephones another without disclosing his true identity to the person answering the telephone, whether or not conversation ensued during the telephone calls.

**2.16 Discontinuance and Restoration of Service**

**2.16.1 Intentional Abuse of Services**

The Company has the right to refuse telephone service to any premises and at any time to discontinue telephone service, if it finds it necessary to do so to protect itself against intentional abuse. Intentional abuse of service includes, without limiting the generality of the foregoing; the use of service facilities of the Company to transmit a message or to locate a person or otherwise to give or obtain information, without payment of a message charge or an exchange service charge. Another form of such abuse is an intentional uninterrupted connection of one exchange station or another station, excluding those connection charges for on an elapsed time basis, which permits the use of the facilities in a manner similar to private line service. It also includes intentional receiver off hook conditions.

**2.16.2 Disconnection of Service for Cause**

Upon non-payment of any regulated sum due the Company or upon a violation of any of the conditions governing the furnishing of service as provided in this tariff, the Company may, by notice in writing mailed to the Customer, without incurring any liability, temporarily discontinue the furnishing of service to the Customer. Telephone Services may be discontinued five (5) days after mailing notice of intention to discontinue service and a Restoration of Service charge will be made by the Company for restoration of such Authorization Code and/or line. If the Company elects to discontinue service, the Customer shall be responsible for all charges through the date of termination.

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If any Customer-provided, or end user-provided equipment is used with Facilities provided by the Company in violation of any law or any of the provisions in this tariff, the Company will take such action as is necessary for the protection of its Facilities or the service of its other Customers and other persons provided with Telephone Services. The Customer shall discontinue such use of the equipment or correct the violation immediately upon actual or constructive knowledge of a violation and shall confirm in writing to the company within fifteen (15) calendar days that such use has ceased or that the violation has been corrected. Failure of the Customer to discontinue such use or correct the violation, and to give the required written confirmation to the Company within the time stated above shall result in interruption of the service of the Customer creating the violation.

Telephone Services may be refused, reduced, or partially or completely discontinued without notice in the event the Company is informed that the service is used in such a manner that will adversely affect the Company's services to others.

The Company may disconnect the Telephone Services in accordance with the terms hereof without any liability except for any appropriate refund of prepaid charges and any service deposit with accrued interest.

In the event that legal action is instituted by the Company to recover any sums due and the Company prevails, the Company shall be entitled to recover its costs of collections, legal costs, court costs and reasonable attorney's fees as the courts may award, in addition to whatever other relief the court may award. Any sums then due shall earn interest at the rates of one and one-half (1-1/2%) percent simple interest per month (unless otherwise prescribed by law, in which event at the highest rate allowed by law), from the date these sums were accrued until the entire debt is paid in full.

## **2.17 Installation and Termination**

Service is installed upon mutual agreement between the Subscriber and the Company. The agreement will determine terms and conditions of installation, termination of service, any applicable sales commission structure, and sales commission payment schedule. The service agreement does not alter rates specified in the tables and schedules contained in this tariff.

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## **2.18 Ownership of Equipment**

Equipment furnished by the Company on the premises of a subscriber is the property of the Company. Title to all equipment provided by the Company under these regulations remains with the Company. Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this tariff shall apply to all such permitted assignees or transferees, as well as all conditions for service.

## **2.19 Taxes**

All state and local taxes (i.e., gross receipts tax, sales tax, municipal utilities tax) are listed as separate line items and are not included in the quoted rates.

## **2.20 Promotional Offerings**

The Company may, from time to time, make promotional offerings to enhance the marketing of its services. These offerings may be limited to certain dates, times and location. At the option of the Company, fees may be waived under certain competitive conditions as may be warranted from time to time.

The South Carolina Public Service Commission shall be notified prior to the effective date of promotions.

## **2.21 Minimum Service Period**

The minimum service period for service is one twelve-month period. This information will be disclosed in a written contract or service agreement.

## **2.22 Inspection, Testing and Adjustment**

The Company may, upon reasonable notice, make such tests and inspections as may be necessary to determine whether the requirements of this tariff are being complied with in the installation, operation, or maintenance of the Customer's or the Company's equipment. The Customer shall make such facilities or equipment available to the Company for testing and inspecting upon reasonable notice. The Company may interrupt the service at any time, without penalty to itself, because of departure from any of these requirements.

No interruption allowance will be granted for the time during which such tests and adjustments are made.

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**2.23 Employee Concessions**

Periodically, the Company may conduct beta testing of new service offerings at the residences of Company employees with their consent. Should the employee elect to participate in this testing at their residence, the service offering will be delivered continually after completion of the test at no charge as long as the employee remains in the employment of the company.

Should an employee leave the employment of the Company, such employee's service provided by the Company will be discontinued immediately. Such employee may reapply for service as a customer in the manner set forth herein.

**2.24 Taxes and Fees Chargeable to Customer/ Subscribers**

**2.24.1 Adjustments for Municipality Payments**

If at any future time a municipality acquires the legal right to impose an occupation tax, license tax, permit fee, franchise fee or other similar charge upon the Carrier, and imposes the same by ordinance or otherwise, such taxes, fees or charges shall be billed to the subscribers receiving service within the territorial limits of such municipality. Such billing shall allocate the tax, fee or charge among subscribers uniformly on the basis of each subscriber's monthly charges for the types of service made subject to such tax, fee or charge.

**2.24.2 Adjustments for County or Other Local Taxing Authority Payments**

If at any future time a county or other local taxing authority acquires the legal right to impose an occupation tax, license tax, permit fee, franchise fee or other similar charge upon the Carrier, and imposes the same by ordinance or otherwise, such taxes, fees or charges shall be billed to the subscribers receiving service within the territorial limits of such country or other taxing authority. Such billing shall allocate the tax, fee or charge among subscribers uniformly on the basis of each subscriber's monthly charges for the types of service made subject to such tax, fee or charge.

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### **2.24.3 Gross Receipts Tax**

When utility or telecommunications assessments, franchise fees or privilege, license, occupational, excise, or other similar taxes or fees, based on interstate receipts are imposed by certain taxing jurisdictions upon the Company or upon local exchange companies and passed on to the Company through or with interstate access charges, the amounts of such taxes or fees will be billed to Customers in such a taxing jurisdiction on a prorated bases. The amount of charge that is prorated to each Customer's bill is determined by the interstate telecommunications services provided to and billed to a customer service location in such a taxing jurisdiction with the aggregate of such charges equal to the amount of the tax or fee imposed upon or passed on to the Company.

### **2.24.4 Special Contracts**

In compliance with laws of the State of South Carolina and The Public Service Commission's Rules and Regulations, the Company may, in appropriate circumstances, enter into contracts with specific customers for service on the basis of negotiated rates.

### **2.24.5 Applicable Rates and Charges**

The rates and charges applicable at any given time will be specified in the appropriate rate section and filed with the South Carolina Public Service Commission by the Company.

The Company will furnish new rate pages reflecting any changes in rates and charges to the South Carolina Public Service Commission.

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**3.0 Service Offerings**

**3.1 LightRing Service**

**3.1.1 General**

- A. LightRing service is a dedicated, high capacity, network designed to provide increased reliability and functionality via a self-healing ring topology between multiple customer designated locations and Company and Incumbent Local Exchange Carrier Central Offices where facilities can be made available as determined by the Company. This networks consists of fiber routed through local, alternate central office, internodal and/or interoffice channel facilities that transmit DS1, DS3, OC-3, and/or OC-12 channel services simultaneously over primary and alternate paths between customer designated locations and Company Central Offices. This ring topology will continually monitor DS1, DS3, OC-3 and/or OC-12 service quality, detect any failure within the system, and automatically self-heal around a point of failure to ensure the flow of DS1, DS3, OC-3 and/or OC-12 Services between locations within the self-healing network. For locations where a customer requests LightRing service and facilities are not available, construction charges will apply as set forth on a individual case bases for cases involving extraordinary cost.

- B. LightRing service is available at OC-3, OC-12, and OC-48 capacities.

OC-3 LightRing Service is available as an individual service or in an Overlay Ring Arrangement riding the customer's host OC-12 or OC-48 LightRing service. OC-3 LightRing service provides an equivalent capacity of 3 DS-3s, or any combination thereof not to exceed an OC-3 capacity.

OC-12 LightRing Service is available as an individual service, or in an Overlay Ring Arrangement riding the customer's host OC-48 LightRing service. OC-12 LightRing service provides an equivalent capacity of 12 DS-3s.

OC-48 LightRing Service is available as an individual service, or with overlaying rings in capacities of OC-3 and/or OC-12. OC-48 LightRing service provides an equivalent capacity of 48 DS-3s.

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LightRing service Channel Interfaces are available as follows:

<u>Channel Interfaces</u>	<u>NODES</u>		
	<u>OC-3</u>	<u>OC-12</u>	<u>OC-48</u>
DS-1	Yes	No	No
DS-3	Yes	Yes	Yes
OC-3	No	Yes	Yes
OC-12	No	No	Yes
28 DS-1 Channel System	Yes	Yes	Yes

LightRing service Overlay Ring Arrangements are available as follows:

<u>OVERLAYING LIGHTRING service</u>	<u>Host LightRing Service</u>	
	<u>OC-12</u>	<u>OC-48</u>
OC-3	X	X
OC-12		X

- C. LightRing service is connectible at Company and Incumbent Local Exchange Carrier Central Offices to any compatible high capacity service as provided in Section 3.1 of this Tariff and to compatible Broadband Exchange Line Service at compatible data rates (i.e. 1.586 Mbps). Rates and charges for such other services are as set forth in the applicable sections of this Tariff for such other services.
- D. The Customer must provide suitable floor space, controlled environment, and source of non-switched suitable power to support this service.
- E. Where the customer provides two separate entrance facility cable routes for LightRing service, the primary and alternate entrance facilities will be separate and will enter the customer node over such different routes. When the customer requests a connection at a Customer Node via two Local Channels and facilities do not exist for the second Local Channel, the Company may provide an equivalent second Local Channel via an existing alternate route. When facilities become available for the second Local Channel, the Company may rearrange the alternate route at any time.
- F. The compatibility requirements, technical specifications, and generic requirements for LightRing service terminated at the Customer's designated locations are referenced in Technical Reference ANSI T1.404-1989 and ANSI T1.403-1989.

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- G. DS-3 interface combinations and technical specifications are referenced in Telcordia TR-INS-000342.
- H. DS-1 interface combinations and technical specifications are referenced in Telcordia TR-NPL-000054.

LightRing service DS-3 high capacity service channels have a performance objective of 99.99 percent error-free seconds over a continuous twenty-four hour period. Self-healing multi-nodal DS-1 high capacity service channels have a performance objective of 99.99 percent error-free seconds over a continuous twenty-four hour period.

### **3.1.2 Application of Rates**

- A. Monthly rates and charges as specified in section 3.1.3 following apply for each LightRing service. Customers specify network capacity at the time of the initial order. In an Overlay Ring Arrangement where a customer's overlaying LightRing service rides the customer's host LightRing service, the overlay ring will share the transport of the host ring between common node locations. Rate categories at OC-3, OC-12, and OC-48 capacity levels include Customer Nodes, Central Office Nodes, Local Channels, Alternate Central Office Channels, Interoffice Channels and Internodal Channels. Channel Interfaces are required at each node on the network and must be associated with a LightRing service. An OC-3 Overlay Ring Arrangement requires an OC-3 Channel Interface at each node involved. In Overlay Ring Arrangements, the customer must order a Channel Interface for each entry to or exit from the host ring. In all other situations, the number of Channel Interfaces ordered will depend on whether the customer desires a working interface, or a working interface and a protection interface. The quantity of channel interfaces ordered may not exceed the capacity ordered. When a 28 DS-1 Channel System is utilized to activate DS-1 Channels, the appropriate number of DS-1 Channel Interfaces are required in lieu of an originating or terminating DS-3 Channel Interface.
- B. Nonrecurring charges for Local Channels, Alternate Central Office Channels, Internodal Channels, Nodes and Channel Interfaces may apply for each channel. When the customer requests two separate routes and the routing is provided as described in section 3.1.1 preceding, charges apply for the Local Channels and any Interoffice Channels on the requested route. If the Company rearranges the alternate route, nonrecurring charges do not apply for the second local channel. Recurring charges for Local, Alternate Central Office, Interoffice, and Internodal Channels apply for each quarter air mile increment of the channel. Fractions of a quarter mile will always round up to the next quarter air mile before determining the mileage and applying the rate. For channels that are less than one-quarter mile, a minimum charge of one-quarter mile applies.

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- C. Customers with DS-3 interfaces at the Customer Node electing to connect with DS-1 services at a Central Office Node, must obtain a 28 DS-1 Channel System, and the appropriate number of DS-1 Channel Interfaces in lieu of a DS-3 Channel Interface. A maximum of 28 DS-1 Channel Interfaces can be activated for each 28 DS-1 System utilized. Nonrecurring charges are established on a per order basis for each 28 DS-1 Channel System and for each additional 28 DS-1 Channel System at that same Central Office Node. Nonrecurring charges apply for each DS-1 Channel Interface which originates/terminates in a 28 DS-1 Channel System. The recurring rate applies for each 28 Channel System and each DS-1 Channel Interface activated per Central Office Node.
- D. LightRing service is available under several payment plans: 36 Month Term Payment Plan (24-48 Months), 60 Month Term Payment Plan (49-72 Months), or 84 Month Term Payment Plan (73-96 Months). The 36, 60 and 84 Month Term Payment Plans are provided under conditions specified. For all payment plans, the following regulations apply:
1. All rate elements, except Channel Interfaces for a given LightRing service, whether initially or subsequently ordered, must be provided under the same payment plan with the same service period and are coterminous upon disconnect of the LightRing service. Channel Interfaces may be ordered under payment plans equal to or less than the selected payment period for a given LightRing service.
  2. The rates applicable to a month-to-month payment plan are subject to Company initiated changes.
  3. A termination liability charge will be applicable if services provided are disconnected prior to the end of the chosen service period. The applicable charge is equal to the number of months remaining in the rate stabilized service period times sixty percent of the monthly rates for LightRing service which include all Nodes, Channel Interfaces, Local Channels, Alternate Central Office Channels, Internodal Channels and/or Interoffice Channels provided under the LightRing arrangement. For services under the month-to-month payment plan, a termination charge is equal to the number of months remaining in the twelve month minimum times the month-to-month rates in effect for LightRing service at the time of termination.
  4. When a service period under an existing LightRing arrangement is completed and a customer elects to revert to a month-to-month payment option, no minimum period is applicable.

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5. Additions of services or rate elements, for activating spare or unused capacities of a LightRing service, must be activated at the same rates and charges specified under the existing arrangement. Channel interfaces may be ordered as specified in 1. preceding.
6. Addition of services or rate elements, i.e. new local channels, interoffice channels, etc., other than for activating spare or unused capacities, must be under new LightRing arrangement at rates and charges as specified in 1. preceding. The new LightRing arrangement must be at least 24 months and must be coterminous with the existing arrangement for LightRing service.

### **3.1.3 Architecture**

#### **A. LightRing service**

The LightRing service configuration utilizes a multi-nodal ring architecture, which is specified jointly by the Company and the Customer. The minimum configuration provides dedicated DS-3 (44.736 Mbps) and/or DS-1 digital services and must include at least three nodes. The maximum number of nodes will be determined based on equipment capability. The nodes are connected by LightRing service Local Channels, Alternate Central Office Channels, Interoffice Channels and Internodal Channels as applicable. LightRing service may be connected to other high capacity services wherever agreed upon by the Company and the Customer.

Applicable rate elements for this service are:

- Customer Nodes provide ring switching capabilities at customer designated locations other than Company or Incumbent Local Exchange Carrier Central Offices that are part of LightRing service. This rate element offers OC-3, OC-12, or OC-48 network capacities. A summary of the channel interfaces available with each node are specified in 3.1.1 preceding.
- Customer Channel Interface provides DS-1 and DS-3 electrical channelization and/or OC-3 or OC-12 optical channelization that may take place at each Customer Node of LightRing service. The Customer Channel Interface rate element applies for every interface capacity that originates or terminates at a Customer Node.
- Central Office Node provides ring switching capabilities at Company or Incumbent Local Exchange Carrier Central Offices that are a part of LightRing service. This rate element offers OC-3, OC-12, and OC-48 network capacities. A summary of the channel interfaces available with each node are specified in 3.1.1 preceding.

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- Central Office Channel Interface provides DS-1 and DS-3 electrical channelization and/or OC-3 or OC-12 optical channelization that may take place at each Central Office Node located on LightRing service. The Central Office Channel Interface rate element applies for every interface capacity that originates or terminates at a Central Office Node. Customers with DS-3 interfaces at the Customer Node electing to connect with DS-1 services at a Central Office Node, must obtain a 28 DS-1 Channel System.
- Local Channel (at least one for each Customer Node which is directly connected to the serving wire center), provides for the communications path between a Customer Node and the serving wire center of the premises where located.
- Alternate Central Office Channel (at least one for each Customer Node which is directly connected to an Alternate Central Office), provides for the communications path between a Customer Node and an Alternate Central Office.
- Interoffice Channel (one for each path between each two directly connected Company or Incumbent Local Exchange Carrier's Central Offices) provides for the communications path between directly connected Company or Incumbent Local Exchange Carrier's Central Offices located on a LightRing Service.

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**3.1.3 Rates and Charges**  
**3.1.3.A OC-3 LightRing**

<b>OC-3 LightRing</b>					
<b>Mileage Rates (Month to Month)</b>	<b>Non-Recurring Charge</b>	<b>Monthly</b>	<b>24 to 48 months</b>	<b>49 to 72 months</b>	<b>73 to 96 months</b>
Local Channel, Per Channel (per 1/4 air mile)	375	71.25	62.25	54.75	51
Alternate CO Mileage Rates Per Channel	375	513.75	210	131.25	105
Interoffice Channel Mileage Rates Per Channel	142.5	37.5	27	24	20.25
Customer Node OC-3	326.25	1650	742.5	675	607.5
Customer Channel Interface DS-1 DS-3	123.75	26.25	22.5	18.75	15
	105	127.5	101.25	97.5	93.75
Central Office Node OC-3	303.75	1050	742.5	675	607.5
Central Office Channel Interface (per Node)					
DS-3 Interface	150	86.25	63.75	60	56.25
DS-1 Interface	97.5	26.25	22.5	18.75	15
Per DS-3 Channelizer	146.25	487.5	412.5	375	337.5
Per DS-3 Channelized to DS-1	120	9	6	5.25	4.5

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**3.1.3 Rates and Charges**  
**3.1.3.B OC-12 LightRing**

<b>OC-12 LightRing</b>					
<b>Mileage Rates (Month to Month)</b>	<b>Non-Recurring Charge</b>	<b>Monthly</b>	<b>24 to 48 months</b>	<b>49 to 72 months</b>	<b>73 to 96 months</b>
Local Channel, Per Channel (per 1/4 air mile)	375	71.25	62.25	54.75	51
Alternate CO Mileage Rates Per Channel	375	513.75	210	131.25	105
Interoffice Channel Mileage Rates OC-12 Per Channel	142.5	108.75	97.5	86.25	78.75
Customer Node OC-12 OC-3	348.75	2550	1485	1350	1181.25
	0	2025	1383.75	1181.25	1012.5
Customer Channel Interface DS-1 DS-3 OC-3 OC-12	123.75	26.25	22.5	18.75	15
	105	127.5	101.25	97.5	93.75
	142.5	165	127.5	112.5	105
	285	1117.5	772.5	712.5	660
Central Office Node OC-3 OC-12	303.75	1050	742.5	675	607.5
	341.25	1950	1485	1350	1181.25
Central Office Channel Interface (per Node) OC-12 Interface OC-3 Interface DS-3 Interface DS-1 Interface Per DS-3 Channelizer Per DS-3 Channeled to DS-1	450	1117.5	772.5	712.5	660
	285	386.25	285	255	240
	150	86.25	63.75	60	56.25
	97.5	26.25	22.5	18.75	15
	146.25	487.5	412.5	375	337.5
	120	9	6	5.25	4.5

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**3.1.3 Rates and Charges**  
**3.1.3.C OC-48 LightRing**

<b>OC-48 LightRing</b>					
<b>Mileage Rates (Month to Month)</b>	<b>Non-Recurring Charge</b>	<b>Monthly</b>	<b>24 to 48 months</b>	<b>49 to 72 months</b>	<b>73 to 96 months</b>
Local Channel Per Channel (per 1/4 air mile)	375	71.25	62.25	54.75	51
Alternate CO Mileage Rates Per Channel	375	513.75	210	131.25	105
Interoffice Channel Mileage Rates OC-48 Per Channel	142.5	255	202.5	195	187.5
Customer Node OC-48 OC-12	348.75	3915	3307.5	3037.5	2632.5
	348.75	2550	1485	1350	1181.25
Customer Channel Interface OC-12 OC-3 DS-3 DS-1	285	1117.5	772.5	712.5	660
	142.5	386.25	285	255	240
	105	127.5	101.25	97.5	93.75
	123.75	26.25	22.5	18.75	15
Central Office Node OC-48 OC-12	341.25	3645	3082.5	3037.5	2632.5
	341.25	1950	1485	1350	1181.25
Central Office Channel Interface (per Node) OC-12 Interface OC-3 Interface DS-3 Interface DS-1 Interface Per DS-3 Channelizer Per DS-3 Channeled to DS-1	450	1117.5	772.5	712.5	660
	285	386.25	285	255	240
	150	86.25	63.75	60	56.25
	97.5	26.25	22.5	18.75	15
	146.25	487.5	412.5	375	337.5
	120	9	6	5.25	4.5

**3.2 Intercity Bandwidth Service**

**3.2.1 General**

- A. Intercity Bandwidth Service is connection oriented service based on fixed capacity technology.
- B. Intercity Bandwidth Service provides fixed connectivity using digital facilities operating at transmission speeds of DS-1, DS-3, OC-3, OC-12, and OC-48.
- C. Intercity Bandwidth Service is provided on an Intra or InterLATA basis.

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**3.2.2 Rates and Charges**

A. Intercity Bandwidth Service

	<u>Nonrecurring</u>	<u>Monthly</u>	<u>1 Year</u>	<u>3 Year</u>
DS-1	ICB	ICB	ICB	ICB
DS-3	ICB	ICB	ICB	ICB
OC-3	ICB	ICB	ICB	ICB
OC-12	ICB	ICB	ICB	ICB
OC-48	ICB	ICB	ICB	ICB

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